Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

KATHERINE T. WALLACE, PH.D.,
Petitioner,
v.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, ET AL.,
Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,
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QUESTIONS PRESENTED

1. Whether the Superior Court of the District of Columbia is a "court of the United States" for purposes of the federal obstruction of justice statute, 18 U.S.C. § 1503, such that allegations of obstruction of justice in the D.C. Superior Court constitute predicate acts under the civil provisions of the Racketeer Influenced and Corrupt Organizations ("RICO") Act?

2. Whether the Superior Court of the District of Columbia is a "court of the United States" making a Superior Court proceeding an "official proceeding" under the federal witness tampering statute, 18 U.S.C. § 1512, such that allegations of obstruction of justice in the D.C. Superior Court constitute predicate acts under the civil provisions of the RICO Act?

3. Whether a Complaint must prove, corroborate, substantiate and/or provide evidence of corrupt intent in order to state a claim for bribery under 18 U.S.C. § 201(b) and (c), as a predicate act under the civil provisions of the RICO Act?

4. Whether Defendants' private ex parte telephone conference with the district judge's chambers the day after filing their Motion to Stay Plaintiff's Motion for Partial Summary Judgment, in which Defendants requested an Order regarding such motion to stay, which Order the district judge then granted and immediately faxed to Defendants, relieving them of responding to Plaintiff's motion, and the failure of Defendants and the district court to disclose such ex parte communication, violated Petitioner's due process rights and created an appearance of impropriety requiring recusal of the trial judge and reversal of the trial judge's subsequent orders?

PARTIES TO THE PROCEEDING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Katherine T. Wallace appeared as Appellant in the Court of Appeals.

The following parties appeared in the Court of Appeals as Appellees: Skadden, Arps, Slate, Meagher & Flom LLP; Paul, Hastings, Janofsky & Walker LLP; Epstein, Becker & Green, P.C.; Morgan, Lewis & Bockius LLP; Thomas J. Schwarz, Antoinette Cook Bush, Henry P. Baer, Thomas J. Casey, Robert S. Lighthizer, John J. Mangan, Neal S. McCoy, Janet L. Goetz, Richard L. Brusca, Richard A. Hindman, Ellen Lyons, Barbara Berish Brown, Ellen C. Rice, Glenn Merten, Abbey G. Hairston, Grace E. Speights, Linda L. Rickman, William F. Gould, John J. Burke, Tracey DeVaux, David Scott Nance, Simone Wu and Alicia L. Batts.

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CITATIONS OF OPINIONS AND ORDERS OF LOWER COURTS

The relevant opinions and orders of the court of appeals and the district court are unreported, but are included here in the Appendix to this Petition ("Pet. App."). The judgment of the court of appeals is at Pet. App. at A2-A3. The district court's Memorandum Opinion is included here at Pet. App. at A4-A14. The district court's accompanying Order stands at Pet. App. at A15-A16. The court of appeals' orders denying petitions for panel rehearing and rehearing en banc stand at Pet. App. A17 and A18, respectively.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the District of Columbia Circuit in Wallace v. Skadden Arps et al., 99-7199, affirming the district court's dismissal of the First Amended Complaint (Pet. App. at A33-A70), in its entirety was entered May 18, 2000. Petitioner, Katherine T. Wallace filed timely petitions for panel rehearing and rehearing en banc. Both petitions were denied on July 21, 2000. Consequently, this Court has jurisdiction to review the Court of Appeals' judgment on writ of certiorari pursuant to 28 U.S.C. §1254(1) which authorizes Supreme Court review of civil judgments of United States Courts of Appeals upon grant of a petition for writ of certiorari.

CITATION OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS PETITION

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STATEMENT OF THE CASE

This case arises from Respondents' actions in two related cases brought by Petitioner Katherine T. Wallace, Ph.D., in the Superior Court of the District of Columbia against Respondent Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") and certain of its partners and employees. In those cases, Skadden Arps made financial offers to all ten third-party witnesses subpoenaed by Petitioner for deposition, seeking to influence such witnesses' testimony by itself representing those witnesses at their depositions or paying its hired lawyers or other lawyers to do so. Petitioner is an attorney and a member of the Bar of the District of Columbia and the Bar of this Court. Respondents are defendants in the Superior Court actions, the attorneys who participated in soliciting witnesses and witnesses who accepted the financial offers. All Respondents, with the exception of Linda L. Rickman and Tracey DeVaux are either law firms operating in the District of Columbia or lawyers who belong to its Bar or the New York Bar.

Petitioner was employed as an associate in the Washington, D.C. office of Skadden Arps from September 1993 until September 1995, when her employment was terminated. Dr. Wallace subsequently filed two lawsuits against Skadden Arps in the D.C. Superior Court: one alleging defamation, the other alleging violations of the D.C. Human Rights Act. Each case was separately dismissed. Dr. Wallace appealed and on January 15, 1998 the District of Columbia Court of Appeals reversed the Defamation Case in part, and reversed the Human Rights Case in its entirety.

On remand, the parties agreed that any discovery taken in either case would be applicable to both cases. However, Petitioner's efforts to fairly conduct discovery in those two lawsuits by securing the testimony of third-party fact witnesses was thwarted and tainted by Skadden Arps and its lawyers who sought to directly influence and control the testimony of those third-party witnesses before and during their testimony under oath.

Respondents Janet L. Goetz and Richard Brusca are Skadden Arps partners who, with associate Ellen Lyons,

represented Skadden Arps before the two cases were remanded. In February, 1996 Dr. Wallace subpoenaed Timothy Robinson for deposition, after which Brusca contacted Robinson and offered to represent him for free at his deposition. Robinson declined, but Lyons contacted him again and repeated the offer. Robinson again declined and was deposed.

On remand, Skadden Arps hired Respondent Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), including Respondents Barbara Berish Brown, Ellen C. Rice and Glenn Merten as defense counsel. Petitioner Abbey G. Hairston, then partner in Epstein, Becker & Green, P.C. ("Epstein Becker") was also added to the defense team. Respondent Thomas J. Schwarz, Skadden Arps partner and Litigation Practice Leader acted as client representative.

Skadden Arps' efforts to control witness testimony continued after remand, with the Skadden Arps partner, Respondent Antoinette Cook Bush, a defendant in the Superior Court cases, and/or the newly hired lawyers contacting each and every subpoenaed third-party witness, in some cases multiple times, in order to convince such witnesses to accept Skadden Arps' offer of free legal services, in exchange for allowing Skadden and its lawyers to directly influence the third-party witnesses' sworn testimony. Skadden Arps, either through Bush or its counsel offered each subpoenaed third-party witness free legal services paid for by them, provided by their lawyers, in return for their agreement to allow Skadden Arps, through counsel and otherwise, to influence their sworn testimony. According to Appellees' Brief before the D.C. Circuit, all ten witnesses subpoenaed by Petitioner were made such offers, "five chose to be represented by attorneys then representing Skadden, Arps, three selected counsel of their own (whom [Skadden Arps] then paid), and two chose to be unrepresented." Appellees' Brief at 2. In fact, Respondent Simone Wu chose to be represented by separate counsel paid for by Skadden Arps as well as Skadden's hired attorney, Brown. Respondents William Gould, John Burke, Tracey DeVaux, Linda Rickman, and David Scott Nance are also third-party witnesses who accepted Skadden Arps' offers and allowed influence of their testimony under oath.

Not only did the same lawyers who represented the Defendants represent these six third-party fact witnesses at their sworn depositions, but the Defendants' lawyers instructed those third-party witnesses regarding their testimony before and during such depositions, including instructing each of them not to answer certain questions posed during the depositions. The witnesses complied with Skadden Arps' instructions.

In addition, Skadden Arps and its lawyers repeatedly caused delays and prevented witnesses' appearance for deposition. Despite agreeing otherwise, Skadden Arps' refused to allow the deposition of Respondent Alicia L. Batts on the scheduled date. Batts along with her counsel, Respondent Grace Speights of Morgan, Lewis & Bockius LLP complied with Skadden Arps' instructions not to appear. Several other third-party witnesses were instructed not to appear for subpoenaed depositions and complied with such instructions, some of them canceling several times at Skadden Arps' behest.

Subject matter jurisdiction for the district court was established by 28 U.S.C. § 1331 which provides the U.S. district courts with original jurisdiction of any civil action arising under the laws of the United States and by 18 U.S.C. § 1964(c), which authorized the civil action below, in order that Plaintiff recover damages suffered to her business and property through Defendants' alleged pattern of racketeering activity and conspiracy to commit racketeering, as outlawed by 18 U.S.C. § 1962 (c) and (d), respectively.

On August 10, 1998 Dr. Wallace filed the Complaint, Demand for Judgment and Demand for Jury Trial in the United States District Court for the District of Columbia, alleging a pattern of racketeering activity, including 48 counts of bribery, witness tampering, obstruction of justice and conspiracy to commit racketeering. Plaintiff filed the First Amended Complaint on August 25, 1998. Pet. App. at A33-A70. On September 9, 1998 Dr. Wallace filed a Motion for Partial Summary Judgment, seeking resolution of 38 of the 52 counts in the First Amended Complaint. The 53 supporting exhibits included deposition testimony of the third-party witnesses in which lawyers represented the Defendant Skadden Arps as well as the witness

and, in which those lawyers - on the record - instructed those witnesses regarding their testimony, including instructions not to answer questions posed.

On the same day that Dr. Wallace filed her Motion for Partial Summary Judgment, Defendants filed a Motion to Dismiss. One week later, on September 16, 1998 Defendants filed a Motion to Stay Plaintiff's Motion for Partial Summary Judgment. The following day, September 17, 1998 unbeknownst to Dr. Wallace, certain Defendants and their counsel held an ex parte telephone conference with Judge Kollar-Kotelly's chambers to discuss the issuance of an order regarding Defendants' motion to stay, filed the day before. Later that day, upon Defendants' request, the district court issued an Order relieving Defendants' of the requirement of responding to Plaintiff's Motion for Partial Summary Judgment and sent it to Defendant Paul Hastings' offices via facsimile, effectively granting Defendants' motion for stay before Plaintiff had received or responded to the motion. Dr. Wallace timely opposed Defendants' motion to dismiss, incorporating and attaching the evidence submitted in support of her Motion for Partial Summary Judgment and opposed Defendants' motion for stay.

A year later, on September 13, 1999, the district court dismissed the First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, refusing to consider the evidence Plaintiff submitted in opposition and granting Defendants' motion for attorneys' fees and costs. Pet. App. at A4-A14. The district court found that the facts alleged were undisputed and only the motivation behind Defendants' actions was in dispute. Id. at A5. It ruled that the First Amended Complaint failed to properly plead the predicates of bribery, obstruction of justice and witness tampering. In particular, the district court ruled that the Complaint's bribery allegations failed to prove or provide evidence of corrupt intent. Id. at A8-A9. The district court further found that the charges of witness tampering and obstruction would not lie because the alleged activities took place in the D.C. Superior Court, which it found was not a "court of the United States." Id. at A10-A12.

Neither Plaintiff's Motion for Partial Summary Judgment

(the district court never ordered Defendants to respond) nor Defendants' Motion for Stay were considered on their merits. Both were denied as moot, effectively suppressing the evidence supporting Plaintiff's claims. Id. at A15.

Dr. Wallace timely filed a notice of appeal on September 22, 1999. On September 28, 1999 Defendants filed the Affidavit of E. Lawrence Barcella in Support of Award of Attorneys' Fees and Costs and supporting exhibits. This fee affidavit was not served on Petitioner until January 5, 2000 after Petitioner discovered it while reviewing the docket in preparation for appeal.

That affidavit provides sworn testimony and documentary evidence that Defendants held an ex parte conference with Judge Kollar-Kotelly's chambers regarding an Order to be issued on their Motion for Stay on the same day that such an order was issued granting a de facto stay.

Petitioner raised this issue on appeal as an appearance of impropriety, requesting that the case be assigned to a different district judge on reversal and, requesting that the Court of Appeals conduct an appropriate investigation. In its order affirming the district court's dismissal without opinion, the D.C. Circuit stated that it found no impropriety and no evidence of bias. Id. at A2-A3.

ARGUMENT

I. BECAUSE THE QUESTION OF WHETHER THE D.C. SUPERIOR COURT IS A "COURT OF THE UNITED STATES" UNDER THE FEDERAL OBSTRUCTION STATUTE IS A QUESTION NEVER DECIDED BY ANY COURT OF APPEALS AND BECAUSE THE D.C. CIRCUIT DECLINED TO ISSUE AN OPINION IN THE PROCEEDINGS BELOW, THE SUPREME COURT SHOULD GRANT CERTIORARI ON THIS ISSUE.

This petition presents a compelling case for a grant of certiorari. First, it presents two related issues of first impression which no court of appeals has decided. Under Rule 36 of the United States Court of Appeals for the District of Columbia Circuit, such a question should be decided in a published opinion.

D.C. Circuit Rule 36(a)(2)(A). Yet, the Court of Appeals declined to do. Second, the petition presents several questions that go to the heart of fundamental fairness and integrity of judicial proceedings in the courts of the United States, both in the Superior Court of the District of Columbia and United States District Court for the District of Columbia. Indeed, the petition touches on nearly every element necessary for the due administration of justice. It asks that the Court define and delineate the roles and relationships among parties, lawyers, judges and witnesses, all of which have been muddled and compromised by the proceedings giving rise to the original complaint as well as the proceedings in the district court below.

The questions raised by this petition are exceptionally important because in addition to their inherent gravity, the D.C. Circuit's affirmance without opinion conflicts with pertinent decisions of this Court, of the D.C. Circuit itself and of authoritative decisions of Courts of Appeals in other circuits. The issues presented are fundamental to the integrity of the judicial system, such that they require consideration by this Court, both to resolve unsettled questions of importance and to exercise its supervisory power over the lower courts. This Court should therefore grant certiorari.

A. The D.C. Circuit's Failure To Publish An Opinion Construing The Term "Court of The United States" Under Title 18 Leaves A Confusing Legal Landscape That Should Be Resolved By This Court.

The Racketeer Influenced and Corrupt Organizations Act ("RICO") imposes criminal and civil liability upon those engaged in certain "prohibited activities." Section 1964 prescribes the civil remedies for engaging in such prohibited activities and authorizes "[a]ny person injured in his business or property by reason of a violation of section 1962" to sue in any appropriate United States district court. 18 U.S.C. § 1964(c) (1998).

Section 1962 provides in pertinent part that:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. 1962(c) and (d) (1998).

In order to have a claim under RICO's civil provisions, the complaint must plead a pattern of racketeering activity. Section 1961 defines the so-called predicate acts of "racketeering activity," to mean any act indictable under certain enumerated sections of Title 18, including sections 201, 1503 and 1512, the federal bribery, obstruction of justice and witness tampering statutes, respectively. 18 U.S.C. § 1961 (1998). The First Amended Complaint filed in the district court alleged violations of these three statutes as predicate acts of civil RICO. However, the district court ruled and the D.C. Circuit affirmed that section 1503 was inapplicable to the acts complained of because the D.C. Superior Court was not a "court of the United States." Pet. App. at A11.

The question as to whether congressionally created, non-Article III courts are subject to the prohibitions set out in section 1503 of Title 18, has been raised numerous times in district courts. This issue has only once been addressed by any United States Court of Appeals. In United States v. George, 625 F.2d 1081 (3d Cir. 1980), the Third Circuit decided that the District Court of the Virgin Islands was a territorial court and therefore not a "court of the United States." Congress overruled this decision with its passage of 18 U.S.C. § 23 in 1994, which specifically includes the District Court of the Virgin Islands and other territorial courts in the definition of "court of the United States," overruling the result in United States v. George. See also 18 U.S.C. § 23. (1999).

However, the precise question of whether the D.C. Superior Court is such a court, is an issue of first impression that

has not been resolved by any United States Court of Appeals. In its Memorandum Opinion which the D.C. Circuit affirmed without opinion, the district court relied on United States v. Smith, 729 F. Supp. 1380 (D.D.C. 1990), which interpreted "section 1503 to require that 'proceedings must in fact be federal for the charge [obstruction of justice] to lie.'" Pet. App. at A11. (citing Smith, 729 at 1386). However, there is no authority in this context which defines the term "federal" to exclude the local courts of the Federal District. Indeed, there are strong indications to the contrary.

In 1970, the Congress enacted the District of Columbia Court Reform and Criminal Procedure Act which created the Superior Court. It states:

> The judicial power in the District of Columbia is vested in the following courts:
>
> (1) The following Federal Courts established pursuant to article III of the Constitution:
>
> (A) The Supreme Court of the United States.
>
> (B) The United States Court of Appeals for the District of Columbia Circuit.
>
> (C) The United States District Court for the District of Columbia.
>
> (2) The following District of Columbia courts established pursuant to article I of the Constitution:
>
> (A) The District of Columbia Court of Appeals.
>
> (B) The Superior Court of the District of Columbia.

D.C. Code § 11-101 (1998). The plain language and structure of the statute indicate that the District of Columbia Court of Appeals and Superior Court of the District of Columbia are courts of the United States established by Congress pursuant to its Article I powers. The district court's ruling and the cases upon which it

relied thus contradict the plain meaning of the statute.

Moreover, the line of cases interpreting the term "court of the United States" under section 1503 is marked by a failure of analysis and inconsistent reasoning. In Smith, for example, cited by the district court, the defendant moved to dismiss his indictment under section 1503. 729 F. Supp. at 1385-1836. There, the district court relied solely United States v. Regina, 504 F. Supp. 629, 631 (D. Md. 1980), without opposition from the Government, for the proposition that the Superior Court of the District of Columbia is not a "court of the United States." Id. However, that was not the principal reason for the dismissed indictment. Indeed, the court there did not examine the Regina decision's reasoning. Rather, in deciding to dismiss, the Smith court held "that no 'judicial' proceedings were pending at the time of defendant's conduct . . . ." as required by section 1503. Id. at 1386.

Notably, the reasoning in Regina is self-contradictory. There, the court ruled that the Superior Court of the District of Columbia was not a "court of the United States" as required by 18 U.S.C. § 1503, relying on two cases involving the courts in United States territories: United States v. Bell, 108 F. Supp. 777 (D.C. Alaska 1952), which held that the District Court of the Territory of Alaska was not a court of the United States under 18 U.S.C. § 1503; and George, 625 F.2d at 1081, which, relying on Bell, held the same regarding the District Court of the Virgin Islands. Regina 504 F. Supp. at 631.

In particular, the Regina court purported to adopted the George analysis, which rested its decision on the institutional classification of "federal, state or territorial," rather than the court's jurisdiction or powers. Id. (citing George, 625 F.2d at 1089). Yet, the Regina court did engage in a jurisdictional analysis, comparing the Superior Court to both territorial and state courts. The court found that the Superior Court, like the District Court of the Virgin Islands "is not an Article III court," and "cannot be classified as a federal court," but concluded, based on a jurisdictional analysis, that the Superior Court was a local court "with jurisdiction equivalent to that of state courts." Id. In so doing, the Regina court ignored the Third Circuit's reasons for

deciding that District Court of the Virgin Islands was a territorial court.

By contrast, in George, the court examined the origins of the District Court of the Virgin islands in determining its institutional nature. According to George, the District Court of the Virgin Islands was originally created in 1921 to supersede the formal Danish courts, through ordinances adopted by the colonial councils of St. Croix and, St. Thomas and St. John. 625 F.2d at 1087-1088. The Third Circuit thus concluded "'that the present District Court for the Virgin Islands is the direct successor to the district court which was created for the Virgin Islands by the municipal ordinances of 1921. . . . It is thus clear it is a territorial court, . . .'" Id. at 1088.

However, the Superior Court is neither state nor territorial. The court in Regina, in addition to its failure to adhere to the George analysis, failed to address the distinctions between the courts of the District of Columbia and territorial courts. It failed to examine the Superior Court's nature and origins. Thus, Smith's reliance on Regina and the district court's reliance on Smith both appear to be misguided. The D.C. Circuit similarly failed to address such distinctions, despite the fact that Circuit Rule 36 provides that questions of first impression should be resolved in a published opinion. See D.C. Circuit Rule 36(a)(2)(A). Therefore, this Court should grant certiorari to resolve these important questions.

B. This Court Should Clarify The Status of The District of Columbia's Courts in The Context of Title 18 and specifically, sections 1503 and 1512 Et Seq.

The precise nature of the District of Columbia's courts has been an issue since the District was established as the seat of government. This Court has often emphasized the distinction between territorial courts and the courts in the District of Columbia. In so doing, it consistently examined the nature and origins of the District and its institutions. See e.g. O'Donoghue v. United States, 289 U.S. 516 (1933). In O'Donoghue, this Court

explained that territorial courts are "legislative" courts created "under Art. IV § 3, cl. 2 of the Constitution vesting in Congress the power 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; . . .'" Id. at 535. For reasons of their status as putative states, territorial governments are "temporary, " "ephemeral" and of "impermanent character." Id. at 538. On the other hand, this Court stated:

> How different are the status and characteristics of the District of Columbia! The pertinent clause of the Constitution (Art. I, § 8, cl. 17) confers the power on Congress to "exercise exclusive legislation . . . over such district . . . as may . . . become the seat of government of the United States."

Id. at 538 (quoting U.S. Const. Art. I, § 8, cl. 17).

It is this power, conferred by the Constitution's District Clause, that Congress exercised in creating the Superior Court as well as its predecessor Courts in the District of Columbia. With respect to such a predecessor court, the Supreme Court of the District of Columbia, created pursuant to the same power, this Court explained:

> The power to prescribe what effect shall be given to the judicial ~~proceedings~~ of the courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States, [and] which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the government of the United States . . . That the Supreme Court of the District of Columbia **is a court of the United States, results from the right of exclusive legislation over the District which the Constitution has given to Congress**.

Embry v. Palmer, 107 U.S. 3, 30-31 (1882) (Emphasis added). See also Callan v. Wilson, 127 U.S. 540 (1880) (finding that the

Supreme Court of the District of Columbia is a "court of the United States"); Benson v. Henkle, 198 U.S. 1 (1905) (same); James v. United States, 202 U.S. 401, 407 (1906) (same); Cross v. United States, 145 U.S. 571, 576 (1892) (same).

Moreover, neither the creation of such courts pursuant to the District Clause of the Constitution, nor the litigation of matters considered local in character, civil or criminal, appears to bear on their status as "courts of the United States." In Embry, for example, the underlying issue was one of contract and quantum meruit for services rendered, a matter normally considered local, rather than federal. Even for such purposes, the judgment of the Supreme Court of the District of Columbia was held to be a judgment of a court of the United States, precisely because such court was established pursuant to congress's Article I powers. 107 U.S. 30-31.

The reasoning in Embry adds an additional element to the question under consideration. On the one hand, this Court, more than one hundred years ago, decided the question regarding the status of the District of Columbia's courts based on constitutional grounds, yet the recent district court decisions do not address the constitutional issue or the Superior Court's constitutional origins in the context of section 1503. On the other hand, the Third Circuit's institutional analysis in George, - federal, state or territorial - may be helpful, but has been misinterpreted by the district courts attempting to follow it. All of this creates confusion surrounding the Superior Court's status for section 1503 purposes. This Court should therefore grant certiorari to definitively settle this question.

II. BECAUSE THE APPLICABILITY OF SECTION 1512 TO PROCEEDINGS IN THE D.C. SUPERIOR COURT ALSO TURNS ON THE UNRESOLVED DEFINITION OF THE TERM "COURT OF THE UNITED STATES" UNDER TITLE 18, THIS COURT SHOULD GRANT CERTIORARI.

As with section 1503, the propriety of the pleadings alleging violations of 18 U.S.C. § 1512 as RICO predicate acts in

the First Amended Complaint turns on the definition of the term "court of the United States." This too, is an issue of first impression for this Court, with no appellate decisions precisely on point. Moreover, as with section 1503, the cases interpreting the term "official proceedings" under section 1512 have rendered only confusing results. For this reason and for all the reasons above regarding section 1503, this Court should grant certiorari to resolve this question.

Section 1512(b) of Title 18 provides in part:

> (b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--
> (1) influence, delay or prevent the testimony of any person in an official proceeding;
> (2) cause or induce any person to--
> (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
> (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
> (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
> (D) be absent from an official proceeding to which such person has been summoned by legal process; . . .
> . . .
> shall be fined under this title or imprisoned not more than ten years, or both.

18 U.S.C. § 1512(b) (1998).

The district court's decision below, which was affirmed without opinion by the Court of Appeals, determined that the alleged tampering did not involve an "official proceeding," as required by sections 1512 and 1515(a) of Title 18, because it took place in the D.C. Superior Court. Its ruling relied solely on United States v. Allen, 729 F. Supp. 120, 121 (D.D.C. 1989). That case involved a charge of witness tampering in a Superior Court grand jury proceeding. The court concluded that the threatened Superior

Court proceeding did not fall within the definition of "official proceeding" for purposes of 18 U.S.C. § 1512(b). Id.

Section 1515(a)(1) defines the term "official proceeding" as:

> (A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge a judge of the United States Tax Court a special trial judge of the Tax Court, a judge of the United States Claims Court or a federal grand jury;
> (B) a proceeding before Congress; or
> (C) a proceeding before a Federal Government agency which is authorized by law;

18 U.S.C. 1515(a) (1).

The court in Allen concluded that "the D.C. Superior court is clearly not within this definition." Id. In so doing, the Allen court relied on decisions construing section 1512's applicability to military court martial and to state court proceedings, respectively. Id. (citing United States v. Ford, 641 F. Supp. 704 (D.S.C. 1986); Park Assoc. v. Fishbein, 616 F. Supp. 1108 (S.D.N.Y.), aff'd 800 F.2d 1128 (2d Cir. 1986)). Neither the district court, nor the Allen court considered the reasoning of these decisions or their applicability to the courts of the Federal District. Neither the district court nor the Allen court considered whether a proceeding in a court created by Congress and given judicial power in the seat of the United States government, could constitute a proceeding before a "court of the United States," as defined in Section 1515(a)(1)(A). Rather, the Allen court upheld the indictment under section 1512, because the defendant was allegedly trying to prevent or influence testimony related to a federal firearm charge, which it found constituted an official proceeding regardless of whether the indictment was returned in the Superior Court or the United States District Court. Id. at 122. (citing Hackney v. United States 389 A.2d 1336, 1339 (D.C. 1977)). In this case, by contrast, neither the district court nor the Court of Appeals made any analysis at all.

Plainly, the "official proceeding" analysis specific to

military and state courts is inapplicable to the courts in the District of Columbia.

A closer look, however, undercuts the validity of Allen's conclusion that a proceeding in the Superior Court is not an "official proceeding" under section 1512. In United States v. Ford, cited in Allen, the defendant was charged with intimidating a witness under section 1512, because he allegedly attempted to influence testimony in a court martial. 641 F. Supp. at 704. The court dismissed the charge, reasoning that a court marital is not an "official proceeding." The court there construed the term "court of the United States," to be limited to Article III courts. Id. at 705.

First, the Ford determination is at odds with this Court's decision in Embry, which found that an Article I court of the District of Columbia was a "court of the United States." 107 U.S. at 30-31. Moreover, the result in Ford also contrasts with Fourth Circuit's decision in United States v. Clift, 834 F.2d 414 (4th Cir. 1987). There, it was determined that section 1512 was applicable to the hearing held to determine if charges warrant a court martial. According to the Fourth Circuit, the hearing was an "official proceeding" before a Federal Government Agency, namely the department of Defense. Id. at 416. Thus, the decision of the district court in this case, which relied on district court decisions in Ford and Allen, is called into question by stronger authority, the appellate decision in Clift and this Court's historic decision in Embry. Consequently, the court of appeals judgment affirming the district court raises questions and answers none.

The cases attempting to define the term "official proceeding" under section 1512 demonstrate that the issue is not one of settled law. Neither is it settled law that the District of Columbia Superior Court is not "a court of the United States," under 18 U.S.C. § 1503, nor that a proceeding in it does not constitute an official proceeding before "a court of the United States," for purposes of Section 1512.

These unresolved questions were presented to the D.C. Circuit in the appeal below, but that court declined to address the controversy or offer any explanation for its affirmance of the district court's ruling. Its failure to do so, in light of the fact that these questions have never been addressed by any United States

court of appeals, is a departure from the Circuit's policy regarding publishing decisions on issues of first impression, as expressed in Rule 36(a)(2)(A) of the D.C. Circuit Rules. Because this is so and because these issues of first impression have received uneven and contradictory treatment by the district courts, they should be settled by this Court on grant of certiorari.

III. IN AFFIRMING THE DISTRICT COURT'S MEMORANDUM OPINION, THE D.C. CIRCUIT HAS SANCTIONED THE DISTRICT COURT'S RULING THAT A COMPLAINT MUST PROVE, CORROBORATE, SUBSTANTIATE AND PROVIDE EVIDENCE OF CORRUPT INTENT IN ORDER TO STATE A CLAIM FOR BRIBERY AS A PREDICATE ACT OF CIVIL RICO, A DEPARTURE SO FAR AFIELD FROM THE ACCEPTED COURSE OF JUDICIAL PROCEEDINGS THAT THIS COURT SHOULD GRANT CERTIORARI IN ORDER TO EXERCISE ITS SUPERVISORY POWERS OVER THE LOWER COURTS.

A. In Testing The Legal Sufficiency Of The First Amended Complaint, The District Court Failed to Accept Its Allegations As True, As Required By Rule 12(b)(6).

It is well settled that in reviewing a Rule 12(b)(6) motion to dismiss a complaint,: "[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, (1957). The complaint must be "liberally construed in favor of the plaintiff," who must be granted the benefit of all inferences that can be derived from the facts alleged. Consequently, in reviewing a complaint, courts must accord it the spacious interpretation prescribed by the Federal Rules. Id.

In ruling that the First Amended Complaint failed to properly plead the elements of bribery under section 201, the

district court wrote:

> As Defendants correctly point out, however, "[i]n support of her bribery allegation, Plaintiff claims only that cost-free legal representation was offered, provided, requested and received in return for influencing or otherwise impacting testimony." Never in her Amended Complaint does Dr. Wallace explain how Skadden's provision of this free representation to its subpoenaed former employees *per se* constitutes a corrupt act. Rather, she seems to infer a corrupt motive from the fact that Skadden offered free legal services, and simultaneously to assume that such an offer is necessarily corrupt. (Footnote omitted).
>
> Dr. Wallace fails to provide any corroboration of Defendants' putatively corrupt intent or of the fact that any influence of witness testimony was sought or achieved by Defendants, together or separately.

Pet. App. at A9 (quoting Defendants' Motion to Dismiss). In a footnote, the district court further pointed out that "[i]nstead of providing evidence of a corrupt motive, Dr. Wallace makes conclusory statements. . . ." Id. n.4.

In light of the ruling here, the Court of Appeals' reliance on Conley in affirming the district court is misplaced. First, the district court plainly acknowledged that Plaintiff alleged all the necessary elements of bribery: that something of value was offered, provided, requested and received in return for and with the intent of influencing testimony. The court found that "the facts in this action are not in dispute. Rather, the parties dispute why certain events occurred, and what those events signify with respect to Defendants' motive." Pet. App. at A5. Yet, it failed to correctly apply the standards for a motion to dismiss, which require the court to accept the complaint's factual allegations as true. See Leatherman v. Tarrant Cty. Narcotics Unit, 507 U.S. 163, 164 (1993) (citing United States v. Gaubert, 499 U.S. 315, 327 (1991)).

Rather than accepting the allegations of corrupt intent as true for the purposes of the 12(b)(6) motion, the district court required Dr. Wallace to "prove," "explain," provide

"corroboration of Defendants' putatively corrupt intent [and] the fact that any influence of witness testimony was sought [and] achieved," "provid[e] evidence of a corrupt motive" and "substantiate the claim that the offer of cost-free legal services was tendered 'with the intent of influencing [] testimony under oath."[1] Pet. App. at A9.

However, it is well-settled, if not set in stone, that a court may not evaluate proof, corroboration, substantiation or evidence in determining the legal sufficiency of a complaint. It is the province of the jury to hear the evidence and by their verdict to settle the issues of fact. See Whelan v. Abell, 48 F.3d 1247, 1252 (D.C. Cir. 1995). The factual question of intent is peculiarly within the jury's province. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970) (Black, J., concurring in the judgment). The Memorandum Opinion makes clear, however, that the district court raised the legal bar beyond that which is applicable to a motion to dismiss.

In Conley and its progeny, this Court has made clear that the Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim, but a short plain statement of the claim that will give the defendant fair notice of

---

[1] The district court's further conclusion "that RICO's breadth does not reach the activities" alleged, Pet. App. A14, conflicts with the Third Circuit's decision in Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co., 729 F.2d 341 (3d Cir. 1986) cert. gr. in part 479 U.S. 983, and aff'd 483 U.S. 143 (1987). There, the court reversed the dismissal of RICO claims alleging obstruction of justice in a suit the plaintiff filed arising out of the termination of his business. The plaintiff filed the second lawsuit based on civil RICO, prior to the trial in his first lawsuit, alleging that defendants engaged in certain acts of obstruction of justice, including intimidating witnesses in the conduct of the original lawsuit. In reinstating his claim, the court stated: "[a] cause of action, of course, is a form of 'property,' and when it arises out of the termination of a business, we think it is not unfair to characterize conduct tending to impair it as "'business injury.'" Id. at 344. The court there went on to state: " Nor do we agree with the district court that because litigants have other potential remedies for obstructive conduct such as that alleged here, there can be no remedy under RICO. We must assume that by including obstruction of justice among the RICO predicate acts, Congress envisioned the statute being used, where all other requirements are met, to supplement remedies already available for such conduct." Id. at 354. (Footnote omitted).

what the plaintiff's claim is and the grounds upon which it rests. Id. at 103.

By contrast, the D.C. Circuit affirmed the district court's dismissal of the bribery allegations for lack of proof, explanation, corroboration, substantiation and evidence, a clear departure from accepted and usual judicial procedures. The D.C. Circuit's affirmance of the district court's ruling conflicts with every authoritative decision of any United States Court of Appeals and of this Court regarding the accepted course of determining a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Court should grant certiorari and assert its supervisory powers in this case.

B. The Court of Appeals' Affirmance Order Conflicts With The Plain Language of Section 201 and With Pertinent Authority Construing the Statute.

Nevertheless, the panel decision affirmed the district court's conclusion that the First Amended Complaint fails to state a claim for bribery as a predicate act of RICO because "'[i]n support of her bribery allegation, Plaintiff claims only that cost-free legal representation was offered, provided, requested and received in return for influencing or otherwise impacting testimony.'" Pet. App. at A9, (quoting Def's Motion to Dismiss). In affirming the district court, the panel decision conflicts with every authoritative construction of the bribery statute, 18 U.S.C. § 201, including decisions of the Second, Third, Fifth and Sixth and Seventh Circuits.

Such cases have set out the parameters for application of the statute. For the offeror, the offense of bribery is complete upon the offering of or the transfer of the thing of value to the witness. See United States v. Hernandez, 731 F.2d 1147, 1149 (5th Cir. 1984); United States v. Dixon, 658 F.2d 181, 191 (3d Cir. 1981). The crime is complete when the offeror "expresses ability and desire to pay." Hernandez, 731 F.2d at 1149 (quoting United States v. Jacobs, 431 F.2d 754, 760 (2d Cir. 1970), cert. denied 402 U.S. 950 (1971)). Moreover, in United States v. Gorman 807

F.2d 1299 (6th Cir. 1986), cert. denied, 484 U.S. 815 (1987), the Sixth Circuit pointed out that, under section 201, the thing of value need not be money, but the term must be broadly construed to reach all situations in which a public official's or a witness's "judgment concerning his official duties might be clouded by receipt of an item of value given him by reason of his position." Id. at 1304.

Quite simply, the bribery statute and the decisions construing it, forbid compensation of all kinds to any fact witness, except witness fees and reimbursement of expenses as required by law. Hamilton v. General Motors Corp., 490 F.2d 223 (7th Cir. 1973). The Seventh Circuit's decision in Hamilton held that an agreement to compensate a former employee fact witness for testimony in a lawsuit against his former employer was void as against public policy as expressed in 18 U.S.C. § 201. Id. at 227-228. The court there concluded that "the kinds and amounts of reimbursement to which [nonexpert] witnesses are entitled are so severely circumscribed," that the only agreement for reimbursement the law could imply would be for "'reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance.'" Id. at 229 (quoting 18 U.S.C. § 201(j)). The D.C. Circuit's apparent approval of financial arrangements and other agreements by which Respondent Skadden Arps offered ten fact witnesses payment for their sworn testimony conflicts directly with the Seventh Circuit's decision in Hamilton.

Moreover, the district court failed to explain how or under what circumstances providing something of value to a witness with the intent of and in exchange for influencing that witness's testimony under oath can be legal, when section 201 of Title 18 of the United States Code, by its plain language, makes such conduct illegal. The district court cited none of the accepted statutory or case law exceptions to the bribery statute. Its decision thus suffers from the very infirmities it ascribes to the First Amended Complaint: it "provides no statutory or case support for this assumption." Pet. App. at A10. Rather, the district court relied on Respondents' assertion that their payments to and on behalf of third-party witnesses was "common practice." Id. at A11

In raising the bar on considerations under Rule 12(b)(6)

and in failing to articulate either a case or statutory law for its decision, the district court departed from accepted and usual judicial proceedings. The court of appeals, in affirming the district court without opinion sanctioned this departure, requiring this Court to exercise its supervisory powers. Therefore, this Court should grant certiorari.

IV. IN FAILING TO ADDRESS THE APPEARANCE OF IMPROPRIETY RAISED BY DEFENDANTS' EX PARTE COMMUNICATION WITH THE DISTRICT JUDGE'S CHAMBERS, IN WHICH THEY REQUESTED AN ORDER WHICH THE DISTRICT JUDGE THEN FAXED TO DEFENDANTS, THE D.C. CIRCUIT SANCTIONED SUCH AN EGREGIOUS DEPARTURE FROM THE ACCEPTED AND USUAL JUDICIAL PROCEEDINGS THAT IT WARRANTS THIS COURT'S SUPERVISORY INTERVENTION.

Petitioner timely filed the notice of appeal from the district court's dismissal of the case on September 22, 1999. On September 28, 1999 Defendants filed an Affidavit in Support of Attorney Fees. However, this affidavit was not served on petitioner. Rather, Dr. Wallace discovered it in January, 2000 when, in preparing her principle brief on appeal, she reviewed the district court docket entries through the Public Access to Court Electronic Records (PACER) service. She immediately contacted defendant Paul Hastings and requested that a copy be delivered to her. A review of Defendants' belatedly served Affidavit in Support of Attorney Fees and the attached billing records, revealed an entry dated 9/17/98 which stated in part:

> telephone conference with law clerk for Judge Kollar-Kotelly regarding issuance of Order in response to Motion to Stay; office conference with L. Barcella regarding terms of Order issued in response to Motion to Stay; . . .

Rec. on Appeal at 673. The order in question was indeed issued by the district court that same day, September 17, 1998, one day

after Defendants' Motion to Stay was filed. While Petitioner does not know how many persons were involved in the telephone conference, it is clear from the billing entry that the ex parte contact was initiated by the one of the defendants, the law firm of Paul Hastings. Petitioner was never notified of the communication, but belatedly discovered it, just as she discovered that the fee affidavit was filed without serving a copy upon her.

Petitioner raised the issue of an appearance of impropriety in her appeal, requested reversal and remand to a different district judge and an investigation as to the occurrence of actual impropriety. In their Brief, Appellees admitted contacting chambers regarding the order the same day their Motion to Stay was filed, and that the order was faxed to them. The panel decision found no impropriety and no evidence of bias, failing entirely to address the appearance of impropriety issue. Pet. App. at A2-A3.

A. This Court Should Grant Certiorari To Determine If The Ex Parte Communications Violated Petitioner's Due Process Rights and Created An Appearance of Impropriety Requiring Vacatur of the District Court's Judgment and Disqualification of the District Judge.

Section 455(a) of Title 28, the Judiciary Act requires that "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (1998). In order to act under either the recusal statute, or under a reviewing court's general supervisory power under 28 U.S.C. § 2106, the court "need not find actual bias or prejudice, but only that the facts 'might reasonably cause an objective observer to question [the judge's] impartiality.'" United States v. Microsoft Corp., 56 F.3d 1448, 1463 (D.C. Cir. 1995) (quoting Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 865 (1988)).

In Liljeberg, this Court set out the considerations for determining whether a judgment should be vacated because of an

appearance of impropriety. It stated:

> [I]t is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'"

Liljeberg, 486 U.S. at 864 (quoting In re Murchison, 393 U.S. 133, 136 (1955). The Court found vacatur of the district court judgment to be the appropriate remedy, where proceedings were tainted by the appearance of impropriety. 486 U.S. at 868.

In this case, Dr. Wallace discovered the ex parte communications more than a year after they had taken place, and several months after the case was dismissed. Neither the district judge nor the defendants contacted Petitioner at the time of their request. Neither ever disclosed the contact and apparently, neither ever intended to disclose defendants' ex parte request for an order. This failure exacerbates the appearance of bias and raises the question for any objective observer as to the court's impartiality.

In Microsoft, the D.C. Circuit concluded that inappropriate ex parte communications required remand to a different district judge in a case reversed on other grounds. There, as here, the appellants raised the issue of ex parte communications on appeal. The court wrote: "'Ex parte communications are generally disfavored because they conflict with the fundamental precept of our system of justice: a fair hearing requires 'a reasonable opportunity to know the claims of the opposing party and to meet them.'" 56 F.3d 1464 (quoting In re Paradyne Corp., 803 F.2d 604, 612 (11th Cir. 1986) (quoting Morgan v. United States, 304 U.S. 1, 18 (1938))). See also Code of Judicial Conduct for United States Judges, Canon 3(A)(4) (a judge "should neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding") (quoted in Microsoft, 56 F.3d at 1464).

Although the district judge in that case stated that he did

not consider the ex parte submissions, the D.C. Circuit concluded that "the appropriate course would have been simply to refuse to accept any ex parte communications." Id. In this case, Dr. Wallace had no opportunity to address the district judge regarding the communications, because they were kept hidden from her for more than a year. However, because the telephone conference took place immediately after Defendants' Motion for Stay was filed, and because the judge immediately issued the requested order and faxed it to defendant Paul Hastings' offices, facts which Respondents freely admit now, but concealed for fourteen months, it would appear to an objective observer that the judge privately gave preferential treatment to the defendants.

The appearance of improper influence is inescapable — far stronger than in Microsoft. This case raises a prima facie violation of Canon 3(A)(4) of the Judicial Code of Conduct for United States Judges, a prima facie violation of section 455(a) of Title 28 and for the lawyers, a prima facie violation of Rule 3.5(b) of the District of Columbia Rules of Professional Conduct.

The appearance of impropriety is so strong in this case as to raise due process concerns. "The due process clause protects not only against express judicial improprieties but also against conduct that threatens the 'appearance of justice.'" Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986). The due process clause, therefore, "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." Id. (quoting In re Murchison, 349 U.S. 133, 136, (1955)). Yet, in considering Petitioner's appeal, the D.C. Circuit failed to follow its own precedent regarding a party's ex parte communications with the district judge presiding over the party's case and, failed to examine the considerations set out by this Court in Liljeberg and Aetna Life Ins. Co.

Rather, the D.C. Circuit cited Williams v. Phillips Petroleum Co., 23 F.3d 930 (5th Cir. 1994), in support of its conclusion that it found no impropriety or evidence of bias. Pet. App. at A3. In Williams, as here, the appellants raised questions regarding appellees' ex parte contacts with the district judge based on entries in a bill of costs. However, the similarity between the

two cases ends there. Indeed, the D.C. Circuit's decision is in the appeal below is in direct conflict with Williams.

In Williams, the Fifth Circuit found that plaintiffs' counsel lied to the court by misquoting defendants' time entries to make them appear to be inappropriate ex parte contacts with the judge's law clerk when in fact, those phone calls were to the case manager regarding scheduling matters and a discovery conference. Id. at 940. The Fifth Circuit repeatedly asserted that contacting a judge's case manager, as opposed to his law clerk, is permissible and necessary. Further, the court found that appellant's counsel had "attempted to mislead the court by blatantly misrepresenting the record." Id.

By contrast, in this case, Petitioner quoted verbatim from the billing entries. More important, there is no dispute about the facts as Petitioner presented them before the D.C. Circuit. In their Brief below, Respondents admitted to contacting the judge's law clerk, admitted discussing an order in response to the motion they filed the day before and admitted that the judge issued the order the same day they called and then faxed it to them. It is further undisputed that both the district court and Respondents failed to disclose the communication for more than a year, Respondents even failing to serve Petitioner with their fee affidavit.

The D.C. Circuit's reliance on Williams is misplaced, not only because the facts here are sharply different, but also because Williams makes plain the distinction between contacting a case manager as opposed to a judge's law clerk. Most grievous, however, is the court of appeals' complete failure to address the appearance of impropriety question raised before it.

As this Court stated in Liljeberg, "'[t]he guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact.'" 486 U.S. at 869-870 (quoting Public Utilities Comm'n of D.C. v. Pollak, 343 U.S. 451 (1952)). It does not appear so here. The Court of Appeals failed to apply this guiding consideration. The district court's departure from accepted judicial procedure was substantial and egregious and contrary to the D.C. Circuit's instructions in Microsoft, as well as the instructions of the Code of Judicial Conduct for United States Judges. The Court of Appeals

sanctioned this flagrant departure failing to address the appearance of impropriety question put before it. This Court should grant certiorari to exercise its supervisory powers over the lower courts, to determine if Petitioner's due process rights were violated and to evaluate the considerations it has set out in Liljeberg and other pertinent precedent.

CONCLUSION

For all the foregoing reasons, Petitioner, Katherine T. Wallace respectfully requests this honorable Court to grant a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

Respectfully Submitted,

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For Petitioner

United States Court of Appeals
For the District of Columbia Circuit

No. 99-7199

September Term, 1999
98cv01946

Katherine T. Wallace,
Appellant

v.

Skadden, Arps, Slate, Meagher & Flom LLP et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

May 17, 2000, Filed

BEFORE: Williams, Randolph and Rogers, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See Fed. R. App. P. 36; D.C. Cir Rule 36(b). It is

ORDERED AND ADJUDGED that the district court's order filed September 13, 1999, be affirmed substantially for the reasons stated in its accompanying memorandum opinion. While conclusory allegations will often be sufficient to withstand a motion under Federal Rule of Civil Procedure 12(b)(6), where plaintiff makes clear that the allegations rest on specific facts that do not suffice, and no other set of facts, grant of a motion under Rule 12(b)(6) is appropriate. See Conley v. Gibson, 355 U.S. 41, 45-47 (1957). With respect to appellant' allegations of improper

ex parte communications, the court finds no impropriety. See Williams v. Phillips Petroleum Co., 23 F.3d 930, 938-40 (5th Cir. 1994). Nor has appellant provided any evidence of judicial bias. See Liteky v. United States, 510 U.S. 540, 555 (1994). Nevertheless, the court declines to follow appellees' suggestion that sanction be imposed as they have not demonstrated that sanctions are warranted. See Fed. R. App. P 38; D.C. Cir. Rule 38.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir Rule 41.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHERINE T. WALLACE, PH.D.	)	
	)	
Plaintiff,	)	Civil Action No.
	)	98CV-1946
vs.	)	(CKK)
	)	
SKADDEN, ARPS, SLATE, MEAGHER& FLOM LLP et al.	)	
	)	
Defendants.	)	
	)	

September 13, 1999, Filed.

MEMORANDUM OPINION

Plaintiff, Dr. Katherine T. Wallace, brings this action in federal court alleging that Defendants Skadden, Arps, Slate, Meagher & Flom ("Skadden"), *et al.* engaged in a pattern of racketeering activity in violation of the Racketeer Influenced and Corrupt Organizations Act of 1970 ("RICO"), 18 U.S.C. § 1962(c) and (d). The circumstances precipitating this action arose out of two lawsuits Dr. Wallace had initiated in District of Columbia Superior Court against Skadden, where she was employed as an associate prior to her termination in 1995. One alleged defamation against her, the other discrimination on the basis of her race and marital status. In the course of preparing for those suits, Dr. Wallace contends that Skadden offered and provided free legal representation to an assortment of former employees whom Dr. Wallace had subpoenaed as third-party witnesses. In Dr. Wallace's view, this free representation amounted to bribery, obstruction of justice and witness tampering, all intended to harm Dr. Wallace as she attempted to litigate her claims. Claiming that Skadden is an "enterprise" as contemplated by 18 U.S.C. § 1962,

Dr. Wallace filed this action in federal court pursuant to RICO.

Defendants moved to dismiss Dr. Wallace's case in its entirety, pursuant to Fed. R. Civ. P. 12(b)(6), contending that Dr. Wallace fails to state a claim for which relief can be granted. In particular, the challenge the legal predicates for Dr. Wallace's RICO action, and maintain that this action essentially embellishes potential questions of discovery and legal ethics into a fanciful tale of racketeering. Because the Court agrees with Defendants that Dr. Wallace fails to state a legally cognizable claim under RICO, it shall grant Defendants' Motion to Dismiss, and shall dismiss Dr. Wallace's case in its entirety.[1]

I. BACKGROUND.

For the most part, the essential facts in this action are not in dispute. Rather, the parties dispute why certain events occurred, and what those events signify with respect to Defendants' motives. Plaintiff Dr. Wallace, an African American woman, was employed as an associate in Skadden's Washington, D.C. office from September 1993 to September 1995, when her employment was terminated. *See* First Am. Compl. ¶¶3-6. Following this termination, Dr. Wallace filed and herself began to litigate two successive lawsuits against the firm, one alleging defamation ("Defamation case"), and the other alleging

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[1] Dr. Wallace filed a Motion for Partial Summary Judgment on the same day that Defendants filed their Motion to Dismiss. Because the Court dismisses Dr. Wallace's Complaint on its face, it does not need to reach her summary judgment motion. In addition to filing that motion, Dr. Wallace has requested in her Opposition to Defendants' Motion to Dismiss that this Court consider the additional materials she has submitted in support of that Opposition. A court may decide to convert a motion to dismiss into one for summary judgment where matters outside the pleadings are presented, and where the court opts to review such matters. *See* F.Rule.Civ.P. 12(b). "There are constraints on a court's ability to thus transform a motion to dismiss, however. Specifically, Rule 12(b) provides further that, if a motion to dismiss is converted to a motion for summary judgment, 'all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56'" *Tele-Communications of Key West, Inc. v. United States,* 757 F.2d 1330, 1334 (D.C. Cir. 1985). Here the Court sees no advantage to either party, nor to the interests of justice, to effect the conversion which Dr. Wallace requests.

employment discrimination and discriminatory termination on the basis of her race and marital status "(Discrimination case").[2] The District of Columbia Superior Court dismissed both cases, but the District of Columbia Court of Appeals reinstated a portion of the Defamation case and the entire Discrimination case. *See id.* ¶¶ 9-16; *see also Wallace v. Skadden, Arps, Slate, Meagher & Flom et al.*, 715 A.2d 873 (D.C. Ct.App. 1998).

It was during discovery for those cases that the events animating the instant action arose. Principally, Dr. Wallace fells that her attempts to conduct discovery were thwarted when Skadden, the lawyers representing Skadden in those cases, and various third party witnesses whom Dr. Wallace sought to depose regarding her employment with Skadden, all conspired to undermine her litigation efforts. *See id.* ¶¶ 20-22. In her Complaint, Dr. Wallace alleges that each and every named Defendant participated in this process by controlling and frequently rendering inaccessible testimony which she endeavored to procure in the course of discovery.[3] *See id.* ¶¶ 23-170. Dr. Wallace has never litigated these issues in the Superior Court.

II. DISCUSSION

A. Evaluating Dr. Wallace's Complaint on a Motion to Dismiss

When ruling on a motion to dismiss, district courts must afford the complaint a charitable reading, giving Plaintiff the benefit of all inferences that can be derived from the facts alleged. *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624

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[2] Dr. Wallace has three children. *See* First Am. Compl. ¶ 11. Although she does not discuss her marriage in the Complaint, she does mention her husband elsewhere in her pleadings.

[3] Since Dr. Wallace has structured her Complaint with a good deal of repetition as a kind of inventory of each putatively conspiratorial activity (although never indicating how she became aware of this conspiracy or what exactly it effects were), the Court finds no need to elaborate on each Count therein.

(D.C. Cir.1997). Here, the Court remains especially mindful of its duty to Dr. Wallace in light of the fact that she is proceeding *pro se* in this action. As a general matter, complaints filed by *pro se* plaintiffs are held "to less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *see also Moore v. Agency for Int'l Development et al.*, 994 F.2d 874, 876 (D.C. Cir. 1993). While Dr. Wallace herself is an attorney, the Court still grants her complaint a liberal construction; indeed she has already amended it once. Nonetheless, her complaint, "like any other must present a claim upon which relief can be granted by the court." *Crasif v. Holland*, 655 F.2d 1305, 1308 (D.C. Cir. 1981).

In *Kowal v. MCI Communications Corp.*, 16 F.3d 1271 (D.C. Cir. 1994), the District of Columbi circuit admonished that, despite this liberal construction, "the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations." *Id.* at 1276; *see also Brug v. Nat'l Coalition for Homeless,* 45 F.Supp. 2d 33, 36 (D.D.C. 1999). To survive a motion to dismiss, a complaint must at the very least, forge a plausible connection between the facts it alleges and cognizable legal claims. "[B]are conclusions of law, or sweeping and unwarranted averments of fact, will not be admitted for purposes of a [motion to dismiss]." *Haynesworth v. Miller*, 820 F.2d 1245, 1254 (D.C. Cir. 1987). Although the Court draws all reasonable inferences from Dr. Wallace's complaint, then, it need do only that: derive those inferences that are reasonable. "While ordinarily the facts alleged in a complaint will be accepted as true for purposes of resolving a motion to dismiss, in the absence of any facts of record supporting a claim for relief, the moving party is entitle to judgment as a matter of law." *First Chicago Int'l v. United Exchange Co., Ltd.*, 655 F.Supp. 787, 795 (D.D.C. 1987) (citations omitted).

B. Dr. Wallace's RICO claim

Despite its 52 Counts (170 paragraphs), Dr. Wallace's First Amended Complaint alleging a violation of RICO fails to

meet the criteria necessary to survive Defendants' 12(b)(6) motion. Dr. Wallace claims that, in offering providing gratuitous legal services to its former employees during the course of the Superior Court proceedings against the firm, Skadden engaged in a pattern of racketeering activity consisting of bribery (pursuant to 18 U.S.C. § 201), obstruction of justice (pursuant to 18 U.S.C. § 1503), and witness tampering (pursuant to U.S.C. § 1512(b). In order to state a claim under civil RICO, Dr. Wallace must show (1) a violation of the substantive RICO statute, here 18 U.S.C. § 1962, and (2) an injury to plaintiff's "business or property" by reason of that violation. *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, 913 F.2d 948, 950 (D.C. Cir. 1990). A plaintiff may allege violations of state law as predicates of RICO claim only with regard to "murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical . . . ." 18 U.S.C. (1)(A). Otherwise she must charge the defendant under federal law. To avail herself of RICO's remedies, Dr. Wallace must properly plead each element of the predicate acts underlying her RICO claim — bribery, obstruction of justice, and witness tampering. Accordingly, the Court shall examine Dr. Wallace's contentions with respect to each predicate act in turn.

1. *Bribery*

Dr. Wallace claims that Skadden and the other Defendants engaged in bribery specifically "(a) bribery of and offers of bribes to third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony . . .; (b) demands for and acceptance and receipt of bribes by third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony . . . ." First Am. Compl. ¶ 21. Underlying these claims is an assumption that, in offering and providing legal representation free of charge to its former employees in the course of litigation that concerned their employment with Skadden, the firm and all other parties involved in the litigation acted out of illegal motives and/or corrupt intent.

Section 201 of 18 U.S.C. requires Dr. Wallace to prove that either directly or indirectly, Defendants corruptly gave, offered, promised, demanded, sought , received, accepted, or agreed to receive or accept, anything of value in exchange for influencing or being influenced with regard to a witness's testimony under oath. *See* 18 U.S.C. 201(b)(3) and (4). As Defendants correctly point out, however, "[i]n support of her bribery allegation, Plaintiff claims only that cost-free legal representation was offered, provided, requested and received in return for influencing or otherwise impacting testimony." Mot Dismiss at 11. Never in her Amended Complaint does Dr. Wallace explain how Skadden's provision of this free representation to its subpoenaed former employees *per se* constitutes a corrupt act.[4] Rather, she seems to infer a corrupt motive from the fact that Skadden offered free legal services, and simultaneously to assume that such an offer is necessarily corrupt.

Dr. Wallace fails to provide any corroboration of Defendants' putatively corrupt intent, or of the fact that any influence of witness testimony was sought or achieved by Defendants, together or separately. Dr. Wallace ascribes illegal motives to otherwise legal activities, and then characterizes those activities as furthering Defendants' generally corrupt scheme. In doing so, Dr. Wallace presumes what she purports to establish,

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[4] Instead of providing evidence of a corrupt motive, Dr. Wallace makes conclusory statements such as the following:

> Defendant Richard Brusca, partner in Skadden Arps and member of the District of Columbia and New York Bars, in conspiracy with and at the direction of the Discrimination Case Defendants as well as Defendant Goetz, Defendant Schwartz who is partner and firm-wide litigation practice leader of Skadden Arps and Defendant Baer who is counsel to and employment lawyer for Skadden Arps, contacted third party witness Robinson and offered him cost free legal services to be paid for by Skadden Arps with the intent of influencing his testimony under oath at and/or persuading him to absent himself from the deposition to which he was compelled.

First Am. Compl. ¶ 26. Despite the particularity with which she enumerates the parties involved in the putative conspiracy, Dr. Wallace utterly fails to particularize or substantiate the claim that this offer of cost free legal services was tendered "with the intent of influencing his testimony under oath . . .," or any other nefarious motive.

i.e., that Defendants acted nefariously in offering and providing free representation to witnesses in order to control their testimony and thereby obstruct justice. Because Dr. Wallace begins from the assumption that providing legal services to former employees where those employees are subpoenaed as witnesses in a lawsuit against the firm for which the worked is *per se* illegal, and yet provides no statutory or case law support for this assumption, everything she alleges subsequently to corroborate her claim remains bare and conclusory.

2. *Witness Tampering*

Dr. Wallace also claims that Defendants engaged in witness tampering in violation of 18 U.S.C. § 1512. This statute provides, in relevant part, that :

> Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with intent to (1)influence, delay or prevent the testimony of any person in an official proceeding; (2) cause or induce a person to withhold testimony . . . from an official proceeding; evade legal process summoning that person to appear as a witness . . . in an official proceeding to which such person ha been summoned by legal process . . . shall be fined . . . or imprisoned . . . or both.

18 U.S.C. § 1512(b). Defendants counter, however, that "Plaintiff did not and cannot plead the requisite nexus between Defendants' conduct and an 'official proceeding.'" Mot. Dismiss at 15. In support of this contention, they refer the Court to *United states v. Allen*, 719 F, Supp. 120 (D.D.C. 1989), which states that "the D.C. Superior Court is clearly not within this definition." *Id.* at 121 (citing, *inter alia, Park South Associates v. Fischbein*, 626 F.Supp. 1108 (S.D.N.Y), *aff'd*, 800 F.2d 1128 (2d Cir. 1986) (holding in a civil RICO suit that state court proceedings were not official proceedings for purposes of 18 U.S.C. § 1512)). Because

the events of which Dr. Wallace complains took place in the course of discovery for cases pending before the District of Columbia Superior Court, she has failed adequately to plead the requisite elements of section 1512(b)

In addition to this failure, though, Dr. Wallace has again neglected to offer anything to substantiated this claim beyond mere conclusory allegations. Her charge of witness tampering once again rests on the assumption that Skadden's offer of legal representation to its former employees itself constitutes an illegal attempt to influence witness testimony. The Court does not agree. As Defendants have justly noted, "[t]he conduct Plaintiff challenges violates no law or ethical rule. Rather it comports with common practice . . . ." Mot. Dismiss at 2. It is common place for employers to offer legal representation to former employees who are subpoenaed to testify in cases pertaining to that employment. That practice alone does not support a RICO claim or its predicate acts without additional allegations from which a court could reasonably infer illegality.

3. *Obstruction of justice*

Dr. Wallace's obstruction of justice claim suffers from the same lack of substance. Defendants point out, and the Court agrees, that Dr. Wallace fails to plead a threshold element of this claim as well. Conduct obstructing justice must take place in a "court of the United States" to qualify as obstruction of justice under 18 U.S.C. § 1503(a). This court found, in *United States v. Smith*, 729 F. Supp. 1380 (D.D.C. 1990), section 1503 to require that "proceedings must in fact be federal for the charge [obstruction of justice] to lie." *Id.* at 1386 (citations omitted). As was true in part in that case, the proceedings before which Dr. Wallace alleges Defendants to have obstructed justice by "knowingly and corruptly influencing, obstructing, and impeding the due administration of justice and/or corruptly endeavoring to do so," First Am. Compl. ¶ 21, took place in a District of Columbia Superior Court, and not in a federal court. Therefore section 1503 is inapposite, and the charge cannot lie.

Dr. Wallace has indicated that she would like leave to

amend her Complaint once again, if the Court deems it necessary, in order to substitute District of Columbia statutes prohibiting bribery for the latter two federal statute she cites. *See* Pl.'s Mem. Opp. Mot. Dismiss at 16, 22-24. In so doing, she hopes to circumvent the jurisdictional problems her obstruction of justice and witness tampering claims present. While such substitution might cure her jurisdictional problems, it would ultimately prove futile, since Dr. Wallace continues to rely on mere conclusory allegations. Moreover, Dr. Wallace's gesture indicating her desire to amend falls show of what Local Rules require: thus she "fail[s] to tender a proposed amended complaint pursuant to Local Rule 108(i), which states that '[a] motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended.'" *Kowal*, 16 F.3d at 1280 (citing District of Columbia Local Rule 108(i)).

Defendants advance several additional arguments in their Motion to Dismiss as to why the Court should dismiss Dr. Wallace's Complaint. Because the Court dismiss her Complaint in its entirety on the grounds expressed in the foregoing discussion, though, the Court need not reach the additional arguments proffered by Defendants.

C. Attorneys' fees under 28 U.S.C. § 1927

Finally, Defendants charge that, because "Plaintiff's claims are not only baseless, but . . . are highly inflammatory and malicious and it is clear she acted in bad faith, vexatiously, wantonly, or for oppressive reasons. . . ," Mot. Dismiss at 20-21 (citing *John Akridge Co. v. Travelers Cos.*, 944 F. Supp. 33, 34-35 (D.D.C. 1996)), this Court should award them attorneys' fees and costs.[5] Dr. Wallace never addresses this charge, except to conclude her Opposition to Defendants' Motion to Dismiss by asserting, "[f]or all the foregoing reasons, Defendants' Motion to

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[5] 28 U.S.C. § 1927 provides: "Any attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expense, and attorneys' fees reasonably incurred of such conduct."

Dismiss and for costs must be denied . . . ." Mem. Supp. Opp. Mot. Dismiss at 30. Since she provides no direct opposition to Defendants' request for fees and costs under section 1927, the Court will take her silence on this issue as a concession. Before the Court, then, is an uncontroverted record suggesting that Dr. Wallace has engaged in this litigation out of bad faith. *See* Mot. Dismiss at 21; *see also Olivieri v. Thompson*, 803 F. 2d 1265, 1273 (2d Cir. 1986) ("[A]n award under § 1927 is proper when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose . . . ."). Because the Court finds that Dr. Wallace's Complaint utterly lacks merit, and because she has not offered any arguments opposing Defendants' request for attorneys' fees and costs, the Court shall grant this request as well.

III. CONCLUSION

Dr. Wallace's RICO claim constitutes a creative, but ultimately illusory, apparatus within which to understand the discovery disputes that have left her dissatisfied. Not only does she present no evidence in her Complaint which would give rise to a reasonable inference of illegality under RICO or the predicate statutes she cites, but moreover, these circumstances bear no resemblance to those Congress wished to each in enacting RICO. RICO provides another weapon in the fight against organized crime. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 484 (1984). ("In summarizing the bill on the House floor, its sponsor described the treble-damages provision as 'another example of the antitrust remedy being adapted for use against organized criminality.'" 116 Cong.Rec. 35295 (1970)). The *Sedima* Court also expressed some chagrin at the extent to which the uses of RICO had diverged from those Congress intended, although it recognized that this divergence in part stems from the breadth of the statute. *See id.* at 498-500. Nonetheless, this Court finds that, in the absence of anything in her Complaint beyond conclusory allegations and "sweeping and unwarranted averments of fact," *Haynesworth*, 820 F.2d at 1254, RICO's breadth does not reach the activities Dr. Wallace alleges here.

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED.
An order accompanies this memorandum opinion.

September 13, 1999

COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHERINE T. WALLACE, PH.D.	)	
	)	
Plaintiff,	)	Civil Action No.
	)	98CV-1946
vs.	)	(CKK)
	)	
SKADDEN, ARPS, SLATE,	)	
MEAGHER& FLOM LLP et al.	)	
	)	
Defendants.	)	
	)	

September 13, 1999, Filed.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, the Court hereby grants Defendants' Motion to Dismiss, and orders Plaintiff to pay all attorneys' fees and costs' pursuant to 28 U.S.C. § 1927. It is therefore, on this 13th day of September, 1999,

ORDERED that Defendants' Motion to Dismiss [#3] is GRANTED; and it is further

ORDERED that Plaintiff's Complaint is DISMISSED in its entirety with prejudice; and it is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment [#5] is rendered MOOT; and it is further

ORDERED that Defendants' Motion to Stay Plaintiff's Motion for Partial Summary Judgment [#8] is accordingly rendered MOOT; and it is further

ORDERED that Defendants' request for reasonable attorney' fees and costs, pursuant to 18 U.S.C. § 1927, is GRANTED; and it is further

ORDERED that Defendants shall submit an affidavit and documentation in support of their request for reasonable attorneys' fees and costs by October 1, 1999; Plaintiff's Response thereto shall be due October 15, 1999; and Defendants' Reply shall be due October 25, 1999.

SO ORDERED

COLLEEN KOLLAR-KOTELLY
United States District Judge

United States Court of Appeals
For the District of Columbia Circuit

No. 99-7199 **September Term, 1999**
98cv01946

Katherine T. Wallace,
Appellant

v.

Skadden, Arps, Slate, Meagher & Flom LLP et al.,
Appellees.

July 21, 2000, Filed

BEFORE: Williams, Randolph and Rogers, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed June 15, 2000, it is **ORDERED** that the petition be denied.

PER CURIAM

United States Court of Appeals
For the District of Columbia Circuit

No. 99-7199 September Term, 1999
98cv01946

Katherine T. Wallace,
Appellant

v.

Skadden, Arps, Slate, Meagher & Flom LLP et al.,
Appellees.

July 21, 2000, Filed

BEFORE: Edwards, Chief Judge; Silberman, Williams, Ginsbug, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote it is

ORDERED that the petition be denied.

PER CURIAM

U.S. Const., Art. 1 § 8, cl. 17

The Congress shall have the Power

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yard, and other needful Buildings;

18 USCS § 201 (1998)

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section--

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been

selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent-

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in his the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting

himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever--

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two

years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

18 USCS § 1503 (1998)

§ 1503. Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is--

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

18 USCS § 1512 (1999)

§ 1512. Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to--

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to--

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from--

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in

connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(e) For the purposes of this section--

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(f) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance--

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate [United States magistrate judge], a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be

brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(i) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

18 USCS § 1515 (1999)

§ 1515. Definitions for certain provisions; general provisions

(a) As used in sections 1512 and 1513 of this title and in this section--

(1) the term "official proceeding" means--

(A) a proceeding before a judge or court of the United States, a United States magistrate [United States magistrate judge], a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Claims Court [United States Court of Federal Claims], or a Federal grand jury;

(B) a proceeding before the Congress;

(C) a proceeding before a Federal Government agency which is authorized by law; or

(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;

(2) the term "physical force" means physical action against another, and includes confinement;

(3) the term "misleading conduct" means--

(A) knowingly making a false statement;

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

(E) knowingly using a trick, scheme, or device with intent to mislead;

(4) the term "law enforcement officer" means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant--

(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

(B) serving as a probation or pretrial services officer under this title;

(5) the term "bodily injury" means--

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary; and

(6) the term "corruptly persuades" does not include conduct which would be misleading conduct but for a lack of a state of mind.

(b) As used in section 1505, the term "corruptly" means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

(c) This chapter [*18 USCS §§ 1501* et seq.] does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

18 USCS § 1961 (1)-(6) Definitions

As used in this chapter [*18 USCS §§ 1961* et seq.]--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [*21 USCS § 802]),* which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant),

section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), *section 1951* (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) an act which is indictable under title *29, United States Code, section 186* (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in

section 102 of the Controlled Substances Act [*21 USCS § 802*]), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 [*8 USCS § 1324*] (relating to bringing in and harboring certain aliens), section 277 [*8 USCS § 1327*] (relating to aiding or assisting certain aliens to enter the United States), or section 278 [*8 USCS § 1328*] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity; . . .

18 USCS § 1962(c) and(d) (1999)

§ 1962. Prohibited activities

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 USCS § 1964(c) (1999)

§ 1964. Civil remedies

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

28 USCS § 455(a) (1999)

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

D.C. Code § 11-101 (1999)

§ 11-101. Judicial power

The judicial power in the District of Columbia is vested in the following courts:

(1) The following Federal Courts established pursuant to article III of the Constitution:

(A) The Supreme Court of the United States.

(B) The United States Court of Appeals for the District of Columbia Circuit.

(C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to article I of the Constitution:

(A) The District of Columbia Court of Appeals

(B) The Superior Court of the District of Columbia.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHERINE T. WALLACE, PH.D.	)	
	)	
Plaintiff,	)	
	)	**98CV-1946**
vs.	)	(CKK)
	)	
SKADDEN, ARPS, SLATE,	)	
MEAGHER& FLOM LLP et al.	)	
	)	
Defendants.	)	
	)	

FIRST AMENDED[1] COMPLAINT

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff, KATHERINE T. WALLACE, Ph.D., ("Plaintiff" or "Dr. Wallace"), attorney pro se, files this First Amended Complaint and hereby sues the following Defendants, jointly and severally: Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps"), Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), Epstein, Becker & Green, P.C. ("Epstein Becker"), Morgan, Lewis & Bockius LLP ("Morgan Lewis"), Thomas J. Schwarz, Antoinette Cook Bush, Thomas J. Casey, Henry P. Baer, Robert S. Lighthizer, John J. Mangan, Neal S. McCoy, Janet L. Goetz, Richard L. Brusca, Richard A. Hindman, Ellen Lyons, Barbara Berish Brown, Ellen C. Rice, Glenn Merten, Abbey G. Hairston, Grace E. Speights, Linda L. Rickman, William F. Gould, John J. Burke, Tracey DeVaux, David Scott Nance, Simone Wu , Alicia Batts and Unnamed Defendants A through Z (collectively

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[1] Counts XXXVIII through LXIV and Count LI contain allegations that were either amended or not contained in the original Complaint.

"Defendants") and demands judgment against Defendants, in support of which Plaintiff states the following:

JURISDICTION

1. This Court has jurisdiction of this matter by way of 28 U.S.C. § 1331 which provides this Court with original jurisdiction of any civil action arising under the laws of the United States and by way of 18 U.S.C. § 1964(c).

2. Defendants are law firms and attorneys doing business in the District of Columbia and/or third-party fact witnesses subpoenaed to give depositions in connection with civil actions brought in the Superior Court of the District of Columbia. All wrongful conduct complained of took place in the District of Columbia.

PATTERN OF RACKETEERING ACTIVITY

INTRODUCTION

3. Plaintiff Dr. Katherine T. Wallace, is an African American woman, age 42, who is an attorney and a member of the District of Columbia Bar.

4. Defendant Skadden, Arps, Slate, Meagher & Flom LLP is an enterprise, operating as a law firm within the District of Columbia and in other states and countries, engaged in and whose activities affect interstate and foreign commerce.

5. From September 5, 1993 until September 20, 1995 Dr. Wallace was employed as an associate in the Washington, D.C. office of Defendant Skadden Arps.

6. On September 20, 1995 Dr. Wallace's employment with Defendant Skadden Arps was terminated without notice.

7. On November 1, 1995 Plaintiff Dr. Wallace, attorney pro se, filed a lawsuit in the Superior Court of the District of Columbia, known as Wallace v. Skadden, Arps et al., 95CA-8634 ("Defamation Case"), against Defendants Skadden Arps, Antoinette Cook Bush, Henry P. Baer, Thomas J. Casey, Robert S. Lighthizer, John J.

Mangan, Neal S. McCoy and Richard A. Hindman , all partners, counsel and associates in the firm of Skadden Arps as well Jessie Brooks and David Gross, not defendants here, alleging defamation, intentional infliction of emotional distress and wrongful termination.

8. Defendants Janet Goetz and Ellen Lyons subsequently filed a motion to dismiss on behalf of all Defamation Case Defendants.

9. On or about December 8, 1995 the Defamation Case was dismissed in its entirety.

10. Dr. Wallace filed a timely notice of appeal.

11. In February, 1996 Dr. Wallace, attorney pro se, filed a second lawsuit in the Superior Court of the District of Columbia against Defendants Skadden Arps, Antoinette Cook Bush, Thomas J. Casey and Neal S. McCoy, known as Wallace v. Skadden, Arps et al., 96CA-1053 ("Discrimination Case"), alleging employment discrimination and discriminatory termination based on race and marital status, including the related condition of being a mother of three.

12. Dr. Wallace requested certain discovery, part of which was taken, before the suit was dismissed in its entirety on claim preclusion grounds on May 5, 1996.

13. Defendants Janet Goetz, Ellen Lyons and Richard Brusca represented the Discrimination Case Defendants before the action was dismissed.

14. Dr. Wallace filed a timely notice of appeal.

15. The Defamation and Discrimination cases (collectively "Employment Cases") were consolidated on appeal and argued by Dr. Wallace, attorney pro se, and by Janet Goetz on behalf of the Employment Cases Defendants on October 9, 1997.

16. In a decision announced on January 15, 1998 and subsequently revised on July 30, 1998 The District of Columbia Court of Appeals affirmed in part and reversed in part the Defamation Case and reversed the Discrimination Case in its entirety.

17. In March, 1998 Defendants Paul, Hastings,

Janofsky & Walker LLP, Barbara Berish Brown and Ellen C. Rice entered their appearances as attorneys representing all Defendants in each of the Employment Cases.

18. On April 3, 1998 Defendants Epstein, Becker & Green, P.C. and Abbey G. Hairston entered their appearances as attorneys representing all Defendants in each of the Employment Cases.

19. Subsequently, Defendants Janet Goetz and Ellen Lyons withdrew their appearances as attorneys for Defendants in both Employment Cases; Defamation Case Defendants Brooks and Gross were dismissed by consent.

20. Beginning with Dr. Wallace's initial requests for discovery in March, 1996 and continuing after the reversals on appeal of the Employment Cases, in May, 1998 all Defendants named and unnamed herein, individually and in conspiracy with one another, through their association with and or employment by Skadden, Arps, Slate, Meagher & Flom LLP, an enterprise engaged in and whose activities affect interstate and foreign commerce, and in particular, through their association with and/or employment by such enterprise in connection with its actions as Defendant in the Employment Cases, have directly or indirectly conducted and/ or directly or indirectly participated in the conduct of such enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c) and (d).

21. In particular, Defendants Skadden Arps, Paul Hastings, Epstein Becker and Morgan Lewis, all enterprises doing business as law firms in the District of Columbia whose activities affect interstate and foreign commerce, along with the individual Defendants acting through and in association with them and on their behalf, all but two of whom are lawyers and members of the Bar of the District of Columbia and other state bars, used their positions of trust and honor as lawyers and officers of the Court to carry out such pattern of racketeering activity which includes the following felonious acts:

a. bribery of and offers of bribes to third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony; in violation of 18 U.S.C. § 201;

b. demands for and acceptance and receipt of bribes by third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony, in violation of 18 U.S.C. § 201;

c. tampering with third-party witnesses called or designated by Dr. Wallace with the intent to influence, delay and prevent the testimony of such witnesses or to induce such witnesses to withhold testimony or be absent from the deposition to which such witness was legally summoned, in violation of 18 U.S.C.§ 1512(b); and

d. knowingly and corruptly influencing, obstructing and impeding the due administration of justice and/or corruptly endeavoring to do so, in violation of 18 U.S.C. § 1503.

22. Defendants' felonious acts and racketeering activities have injured and continue to injure Plaintiff Dr. Katherine T. Wallace in her business and property and the danger and threat exists that such racketeering activities and the resulting injury to Plaintiff's business and property will continue in the future.

COUNT I

23. The allegations contained in paragraphs 1 through 22 are realleged herein.

24. On or about March 14, 1996 Plaintiff Dr. Katherine Wallace issued a D.C. Superior Court subpoena

to third-party witness Timothy Robinson compelling his deposition in the Discrimination Case.

25. On that same day, Dr. Wallace served a copy of such subpoena on Defendant Janet L. Goetz, partner of Defendant Skadden Arps and member of the District of Columbia, New York and Massachusetts Bars, who represented Discrimination Case Defendants Skadden Arps, Bush, McCoy and Casey.

26. Subsequent to receiving such service, Defendant Richard Brusca, partner in Skadden Arps and member of the District of Columbia and New York Bars, in conspiracy with and at the direction of the Discrimination Case Defendants as well as Defendant Goetz, Defendant Schwarz who is partner and firm-wide litigation practice leader of Skadden Arps and Defendant Baer who is counsel to and employment lawyer for Skadden Arps, contacted third party witness Robinson and offered him cost-free legal services to be paid for by Skadden Arps. with the intent of influencing his testimony under oath at and/or persuading him to absent himself from the deposition to which he was compelled.

27. In particular, Brusca offered third-party witness Robinson cost-free legal representation at the deposition to which he was compelled, such representation to be provided and paid for by Skadden Arps, with the intent of influencing and/or impeding Robinson's testimony or knowingly endeavoring to corruptly persuade him to absent himself from the deposition, a felonious act of attempted of bribery, witness tampering and obstruction of justice, which violates of sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT II

28. The allegations contained paragraphs 1 through 27 are realleged herein.

29. After learning that third-party witness Robinson

had been subpoenaed to a deposition in the Discrimination Case, Defendant Ellen Lyons, associate attorney in Skadden Arps' Washington, D.C. office and member of the District of Columbia Bar, contacted Robinson and again offered him cost-free legal representation at the deposition to which he was compelled, to be provided by and paid for by Skadden Arps with the intent of influencing and/or impeding his testimony, a felonious act of attempted bribery, obstruction of justice and witness tampering which violates sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

30. Defendant Lyons, in offering such bribe, acted at the direction of Goetz, in conspiracy with Defendants Schwarz, Baer, Brusca, and the Discrimination Case Defendants, Skadden Arps, Bush, Casey and McCoy, also defendants herein.

31. Third-party witness Robinson declined the offers of Brusca and Lyons and subsequently appeared and testified under oath on March 25, 1996 as required by the subpoena.

COUNT III

32. The allegations contained in paragraphs 1 through 31 are realleged herein.

33. On or about May 11, 1998 in a letter of that date, Plaintiff Dr. Wallace provided Defendant Abbey G. Hairston with a list of witnesses Dr. Wallace intended to call for deposition, in an attempt to reach an agreement on the length of the discovery period in the Discrimination Case.

34. On or about May 15, 1998 Plaintiff Dr. Wallace, attorney pro se, and Defendants Hairston and Barbara Berish Brown, appeared on behalf of Discrimination Case Defendants at a scheduling conference before Judge Herbert B. Dixon, at which time a scheduling order was entered and at which time Plaintiff and Defendants agreed

that any discovery requested or taken in either the Discrimination Case or the Defamation Case would be applicable to both such Employment Cases.

35. Subsequently and upon receiving the list of witnesses to be called by Plaintiff, Skadden Arps litigation practice leader Schwarz and Skadden Arps employment lawyer Baer, in conspiracy with and on behalf of Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman, conspired with Defendant Paul Hastings by and through Defendants Brown, Rice and Merten and with Defendant Epstein Becker by and through Defendant Hairston, to commit racketeering in violation of section 1962(d) of Title 18 of the United States Code, to:

a. bribe third-party witnesses with offers of cost-free legal representation to be provided by Defendants Paul Hastings and Epstein Becker and to be paid for by Defendant Skadden Arps with the intent of influencing the sworn testimony of such third-party witnesses at their depositions;

b. to tamper with such third-party witnesses with the intent to influence, delay and/or prevent their testimony and/or with the intent to cause or induce such third-party witnesses to withhold such testimony; and

c. to otherwise knowingly and corruptly influence, obstruct and impede the due administration of justice in the Employment Cases.

COUNT IV

36. The allegations contained in paragraphs 1 through 35 are realleged herein.

37. On or about May 29, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena and on May 31,

1998 served such subpoena upon third-party witness, Defendant Linda L. Rickman compelling her to appear for a deposition on June 22, 1998 in the Discrimination Case.

38. After receiving such subpoena, third-party witness Rickman contacted Employment Cases Defendant Bush and/or Goetz and sought cost-free legal representation at the deposition to which she had been compelled, in return for allowing the Employment Cases Defendants to influence her testimony under oath, a felonious act of seeking a bribe and obstruction of justice in violation of sections 201 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT V

39. The allegations contained in paragraphs 1 through 38 are realleged herein.

40. Upon being contacted by Rickman, Bush and/or Goetz offered Rickman cost-free legal representation to be provided by counsel to the Employment Cases Defendants, Epstein Becker and Paul Hastings, and to be paid for by Skadden Arps, with the intent of influencing Rickman's testimony under oath, and/or with intent to influence Rickman to absent herself from the deposition to which she was compelled, a felonious act of bribery, obstruction of justice and witness tampering in violation sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of sections 1962(c) and(d) of Title 18 of the United States Code.

41. Bush further advised third-party witness Rickman to contact Defendant Abbey G. Hairston, a partner employed by Epstein Becker and member of the District of Columbia, Florida and Maryland Bars, in order to arrange such cost-free legal representation.

COUNT VI

42. All the allegations contained in paragraphs 1

through 41 are realleged herein.

43. Third-party witness Rickman subsequently contacted Hairston, who, on behalf of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and at their instruction, as well as at the instruction of litigation practice leader Schwarz, further offered and agreed to provide cost-free legal representation to third-party witness Rickman, to be paid for by Defendant Skadden Arps, in return for Rickman's agreement to be influenced in her testimony under oath, and for her agreement to absent herself from the deposition to which she was compelled if so instructed by the Employment Cases Defendants or their lawyers, a felonious act of bribery, witness tampering and obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT VII

44. The allegations contained in paragraphs 1 through 43 are realleged herein.

45. On or about June 12, 1998 in a letter of that date, Defendant Barbara Berish Brown, partner in Paul Hastings and member of the District of Columbia and Pennsylvania Bars, in furtherance of the conspiracy to influence Rickman and in performance of the agreement with her to do so, on behalf of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman, and at their instruction and that of Skadden Arps litigation practice leader Schwarz, informed Dr. Wallace that third-party witness Rickman would not appear for deposition on the date compelled, knowingly and corruptly persuading Rickman, a third-party witness, to absent herself from such deposition, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of the United States Code, as

part of a pattern of racketeering activity in violation of sections 1962(c) and (d) of Title 18 of the United States Code.

COUNT VIII

46. The allegations contained in paragraphs 1 through 45 are realleged herein.

47. On or about July 20, 1998 in furtherance of the conspiracy to influence third-party witness Rickman's testimony under oath and in performance of her agreement allowing the Employment Cases Defendants to influence her testimony under oath, third-party witness Rickman met with Hairston at the offices of Epstein Becker at which time Hairston, on behalf of and at the direction of Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and at their instruction and that of Skadden Arps litigation practice leader Schwarz, instructed third-party witness Rickman regarding her testimony to be given under oath, knowingly and corruptly influencing and impeding the due administration of justice, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT IX

48. The allegations contained in paragraphs 1 through 47 are realleged herein.

49. On July 22, 1998 Rickman appeared for deposition, with Abbey Hairston of Epstein Becker appearing as counsel for the Employment Cases Defendants **and** as counsel for third-party witness Rickman, in furtherance of the conspiracy to influence Rickman and in performance of the agreement between Rickman and the Employment Cases Defendants that Rickman be influenced under oath.

50. At such time, Hairston, acting on behalf of

Employment Cases Defendants, on numerous occasions instructed third-party witness Rickman regarding her testimony under oath, including instructing her not to answer questions posed by Plaintiff Dr. Wallace, knowingly corruptly persuading Rickman with the intent of influencing her testimony and inducing her to withhold testimony, all felonious acts of witness tampering and obstruction of justice in violation of sections 1503 and 1512 of title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT X

51. The allegations contained in paragraphs 1 through 50 are realleged herein.

52. In furtherance of the conspiracy and in performance of the agreement between Rickman and the Employment Cases Defendants, third-party witness Rickman followed the Hairston's instructions and withheld testimony as instructed by Hairston, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XI

53. The allegations contained in paragraphs 1 through 52 are realleged herein.

54. After several hours, the Rickman deposition was suspended without being completed.

55. In furtherance of the conspiracy and in performance of their agreement with Rickman, on or about August 5, 1998 Defendants Paul Hastings, Epstein Becker, by and through Brown and Hairston, respectively, on behalf of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and, on behalf of third-party witness Rickman, filed a Motion for Protective Order in the D.C. Superior

Court in the Defamation Case, (Wallace v. Skadden, Arps et al., 95CA-8634) asking Judge Ann O'Regan Keary to prevent Plaintiff Dr. Wallace from deposing Rickman on certain matters deemed by Defendants to be irrelevant to the Defamation Case.

56. In filing such motion, the Employment Cases Defendants as well as Defendants Paul Hastings and Epstein Becker, by and through Brown and Hairston, respectively, knowingly and corruptly concealed from Judge Keary the fact that third-party witness Rickman was not subpoenaed or deposed in the Defamation Case or in any case before Judge Keary, and further knowingly and corruptly concealed the fact that Judge Keary had no jurisdiction to issue any order with respect to Rickman's testimony.

57. In filing such motion, such Defendants knowingly and corruptly concealed the fact that third-party witness Rickman was subpoenaed and deposed in the Discrimination Case (Wallace v. Skadden, Arps et al., 96CA-1053), presided over by Judge Herbert B. Dixon, Jr., to which the testimony sought to be excluded is entirely relevant.

58. The misleading conduct of the Employment Cases Defendants and Defendants Paul Hastings and Epstein Becker, by and through Brown and Hairston, respectively, in filing such motion, knowingly and corruptly endeavoring to influence and impede Judges Keary and Dixon in the discharge of their duties, with the intent of preventing the testimony of third-party witness Rickman are felonious acts of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XII

59. The allegations contained in paragraphs 1 through 58 are realleged herein.

60. On or about May 29, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena which was served on May 31, 1998 on third-party witness Defendant Alicia L. Batts, an attorney employed by the United States Federal Trade Commission and member of the District of Columbia and New York Bars, to compel her testimony at a deposition on June 24, 1998.

61. On or about June 10, 1998 in a letter of that same date, Defendant Morgan Lewis, by and through Defendant Grace E. Speights, partner in Morgan Lewis and member of the District of Columbia and Pennsylvania Bars, informed Dr. Wallace that it represented third-party witness Batts in connection with the deposition to which she had been compelled.

62. On or about June 16, 1998 Plaintiff Dr. Wallace and Speights, on behalf of third-party witness Batts, agreed to allow Batts to comply with the subpoena by giving testimony under oath on August 3, 1998.

63. On or about July 27, 1998 in a letter of that date, Defendant Brown on behalf of, in conspiracy with and at the direction of the Employment Cases Defendants Skadden, Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwartz, attempted to corruptly persuade Dr. Wallace to delay the deposition of third-party witness Batts for at least another month, a felonious act in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962 of the United States Code.

COUNT XIII

64. The allegations contained in allegations 1 through 63 are realleged herein.

65. On or about July 28, 1998 Defendant Speights confirmed her intention with Dr. Wallace to produce third-party witness Batts and to appear at Batts's deposition on August 3.

66. Despite Speights's and Batts's intention to appear

and despite Brown's and Hairston's confirmation that Hairston could appear at a deposition to represent the Employment Cases Defendants on August 3, Brown, on behalf of and at the direction of the Employment Cases Defendants and Schwarz, contacted Speights and through Speights offered Batts cost-free legal services to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps, in the form of a motion to quash the subpoena served on third-party witness Batts, with the intent of delaying Batts's testimony and inducing her to absent herself from the deposition to which she was legally compelled, a felonious act of bribery, witness tampering and obstruction of justice in violation of sections 201, 1503 and 1512 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XIV

67. The allegations contained in paragraphs 1 through 66 are realleged herein.

68. In conspiracy with the Employment Cases Defendants as well as Defendants Paul Hastings and Epstein Becker, by and through Brown and Hairston, respectively, Speights of Morgan Lewis, on behalf of third-party witness Batts, accepted the cost-free legal services provided by Epstein Becker and Paul Hastings and paid for by Defendant Skadden Arps, in return for Batts's agreement to absent herself from the deposition to which she had been legally compelled, a felonious act of accepting a bribe and obstruction of justice in violation of sections 201 and 1503 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and(d).

COUNT XV

69. The allegations contained in paragraphs 1 through 68 are realleged herein.

70. In furtherance of the conspiracy and in performance of the agreement among third-party witness Batts, Speights, Brown, Hairston and the Employment Cases Defendants, an untimely motion to quash the Batts subpoena was prepared by Epstein Becker and Paul Hastings, paid for by Skadden Arps and untimely filed with the D.C. Superior Court in the Discrimination Case, in an endeavor to influence, impede and obstruct the due administration of justice in the Employment Cases, a felonious act in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XVI

71. The allegations contained in paragraphs 1 through 70 are realleged herein.

72. In furtherance of the conspiracy and in performance of the agreement Batts and Speights entered with the Employment Cases Defendants and their lawyers Paul Hastings and Epstein Becker, third-party witness Batts through a letter dated July 30, 1998 from Brown to Dr. Wallace and in a subsequent letter from Speights, refused to appear for the deposition to which she was legally compelled and in fact and failed to so appear, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (c) of Title 18 of the United States Code.

COUNT XVII

73. The allegations contained in paragraphs 1 through 72 are realleged herein.

74. On or about June 5, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena to and on June 7, 1998 served such subpoena on third-party witness Defendant William F. Gould, an Assistant United States Attorney employed with the Department of Justice in the

District of Columbia and member of the District of Columbia Bar, compelling him to attend a deposition on July 8, 1998.

75. Upon receipt of such subpoena, third-party witness Gould contacted Defendants Paul Hastings, the lawyers representing the Employment Cases Defendants and requested cost-free legal representation at the deposition to which he had been compelled, in return for allowing the Employment Cases Defendants to influence his testimony under oath, a felonious act of seeking a bribe and obstruction of justice in violation of sections 201 and 1503 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XVIII

76. The allegations contained in paragraphs 1 through 75 are realleged herein.

77. Upon being contacted by Gould, Defendant Brown, on behalf of and at the direction of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz, offered third-party witness Gould cost-free legal representation to be provided by counsel to the Employment Cases Defendants, Paul Hastings, to be paid for by Skadden Arps, with the intent of influencing Gould's testimony under oath, a felonious act of bribery, witness tampering and obstruction of justice in violation sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and(d) of Title 18 of the United States Code.

COUNT XIX

78. The allegations contained in paragraphs 1 through 77 are realleged herein

79. On or about July 2, 1998 in a letter of the same date, Defendant Ellen C. Rice, an associate of Paul

Hastings and member of the District of Columbia and Maryland Bars, on behalf of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and at the direction of Brown, contacted Plaintiff Dr. Wallace in an knowing attempt to corruptly persuade Dr. Wallace to cancel the deposition of third-party witness Gould, with the intent of preventing Gould's testimony and impeding the due administration of justice, a felonious act in violation of section 1503 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

80. Dr. Wallace declined to cancel Gould's deposition.

COUNT XX

81. The allegations contained in paragraphs 1 through 80 are realleged herein.

82. On or about July 8, 1998 in furtherance of the conspiracy to corruptly influence third-party witness Gould's testimony under oath and in performance of the agreement between Gould and the Employment Cases Defendants to allow the influence of his testimony, Gould met Defendant Brown at the offices of Paul Hastings, at which time Brown, on behalf of the Employment Cases Defendants, instructed Gould regarding his testimony to be given under oath, a felonious act of witness tampering and obstruction of justice in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

83. Dr. Wallace declined to cancel Gould's deposition.

COUNT XXI

84. The allegations contained in paragraphs 1 through 83 are realleged herein.

85. On or about July 8, 1998 in furtherance of the conspiracy to corruptly influence third-party witness Gould's testimony under oath and in performance of the agreement between Gould and the Employment Cases Defendants to allow the influence of his testimony, Gould appeared for deposition, with Defendant Brown appearing as counsel for the Employment Cases Defendants and counsel for third-party witness Gould.

86. At such time, Brown, acting on behalf of and in conspiracy with the Employment Cases Defendants, on numerous occasions instructed third-party witness Gould regarding his testimony under oath, including instructing him not to answer questions posed by Plaintiff Dr. Wallace, knowingly and corruptly persuading Gould with the intent of influencing his testimony and inducing him to withhold testimony, all felonious acts witness tampering and obstruction of justice in violation of sections 1503 and 1512 of Title 18 of the United States Code, as a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXII

87. The allegations contained in paragraphs 1 through 86 are realleged herein.

88. In furtherance of the conspiracy to influence Gould's testimony and in performance of the agreement between Gould and the Employment Cases Defendants and their lawyers Paul Hastings and Epstein Becker, third-party witness Gould followed Brown's instructions and withheld testimony as instructed by Brown, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXIII

89. The allegations contained in paragraphs 1 through 88 are realleged herein.

90. On or about June 5, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena to and on June 7 served such subpoena on third-party witness Defendant John J. Burke, a lawyer and associate in the law firm of Pepper, Hamilton LLP and member of the District of Columbia and Pennsylvania Bars, compelling him to appear for a deposition on July 10, 1998.

91. A copy of such subpoena was served on counsel to the Employment Cases Defendants, Brown and Hairston.

92. Upon learning of the issuance of a subpoena to third-party witness Burke, Defendant Glenn Merten, an associate of Paul Hastings, at the direction of Defendant Brown on behalf of and in conspiracy with the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz, contacted Burke and offered him cost-free legal representation at the deposition to which he was compelled, to be provided by Defendants Paul Hastings and Epstein Becker and to be paid for by Skadden Arps, with the intent of influencing Burke's testimony under oath, a felonious act of bribery, obstruction of justice and witness tampering in violation of sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXIV

93. The allegations contained in paragraphs 1 through 92 are realleged herein.

94. Upon being contacted by Merten, third-party witness Burke sought and accepted cost-free legal representation at the deposition to which he was compelled, to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps in return for being influenced in his testimony under oath by the Employment Cases Defendants, a felonious act of accepting a bribe and obstruction of justice in violation of sections 201 and 1503

of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXV

95. The allegations contained in paragraphs 1 through 94 are realleged herein.

96. In furtherance of the conspiracy to corruptly influence third-party witness Burke's testimony under oath and in performance of the agreement between Burke and the Employment Cases Defendants to allow the influence of his testimony, on or about July 3, 1998 Burke met with Defendant Hairston, at which time Hairston instructed Burke regarding his testimony to be given under oath, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXVI

97. The allegations contained in paragraphs 1 through 96 are realleged herein.

98. On or about July 10, 1998 in furtherance of the conspiracy to corruptly influence third-party witness Burke's testimony under oath and in performance of the agreement between Burke and the Employment Cases Defendants to allow the influence of his testimony, Burke appeared for deposition with Defendant Hairston appearing as counsel for the Employment Cases Defendants **and** as counsel for third-party witness Burke.

99. At such time, Hairston, acting on behalf of and in conspiracy with the Employment Cases Defendants, on numerous occasions instructed third-party witness Burke regarding his testimony under oath, including instructing him not to answer questions posed by Plaintiff Dr. Wallace, knowingly and corruptly persuading Burke with the intent of influencing his testimony and of inducing him

to withhold testimony, all felonious acts of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962 of Title 18 of the United States Code.

COUNT XXVII

100. The allegations contained in paragraphs 1 through 99 are realleged herein.

101. In furtherance of the conspiracy to corruptly influence Burke's testimony under oath and in performance of the agreement between Burke and the Employment Cases Defendants and their lawyers Paul Hastings and Epstein Becker, third-party witness Burke declined, refused and failed to answer questions in accordance with Hairston's instruction, withholding his testimony under oath at her instruction, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXVIII

102. The allegations contained in paragraphs 1 through 101 are realleged herein.

103. After Employment Cases Defendants and their lawyers learned by way of Dr. Wallace's letter dated May 11, 1998 that third-party witness Defendant Tracey DeVaux was identified as a witness to be called for deposition, Employment Cases Defendant Bush, on behalf of and in conspiracy with the other Employment Cases Defendants Skadden Arps, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman as well as Skadden Arps litigation practice leader Schwarz, and at their direction, contacted third-party witness DeVaux to offer her cost-free legal representation to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps, in the event she was subpoenaed for a deposition.

104. Bush offered such cost-free legal services with the

intent to corruptly influence DeVaux's testimony under oath, a felonious act of attempted bribery, witness tampering and obstruction of justice in violation of sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of title 18 of the United States Code.

105. Third-party witness DeVaux declined the offer for cost-free representation at that time.

COUNT XXIX

106. The allegations contained in paragraphs 1 through 105 are realleged herein.

107. On or about June 5, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena which was served on June 7, 1998 on third-party witness Defendant Tracey DeVaux, to compel her to appear for deposition of July 9, 1998.

108. In a telephone conversation with Dr. Wallace on or about June 8, 1998, DeVaux and Dr. Wallace agreed that DeVaux would comply with the subpoena by giving testimony on July 15, 1998.

109. After receiving notice of the subpoena issued to Tracey DeVaux, Defendant Rice, at the direction of and in conspiracy with Defendants Brown and Hairston and Schwarz, at the direction of, on behalf of and in conspiracy with the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman, contacted third-party witness DeVaux and offered her cost-free legal representation at the deposition to which she was compelled, to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps.

110. Rice offered such bribe to DeVaux with the intent to influence DeVaux's testimony under oath, a felonious act of attempted bribery, obstruction of justice and witness tampering in violation of sections 201, 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of

racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

111. Third-party witness DeVaux declined Rice's offer at that time.

COUNT XXX

112. The allegations contained in paragraphs 1 through 110 are realleged herein.

113. On or about July 13, 1998, at the direction of Defendants Brown, Hairston and Schwarz and on behalf of the Employment Cases Defendants Skadden Arps, Bush, Baer, McCoy, Casey, Lighthizer, Mangan and Hindman, Defendant Rice again contacted third-party witness DeVaux and offered her cost-free legal representation at the deposition to which she was compelled, in an attempt to corruptly persuade her and with the intent of influencing DeVaux's testimony under oath, a felonious act of bribery, witness tampering and obstruction of justice in violation of sections 201, 1503 and 1512 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXXI

114. The allegations contained in paragraphs 1 through 113 are realleged herein.

115. Upon the third offer of cost-free legal representation to third-party witness DeVaux, Defendant DeVaux accepted such cost-free legal representation to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps, in return for her agreement to be influenced in her testimony, a felonious act of accepting a bribe and obstruction of justice in violation of sections 201 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXXII

116. The allegations contained in paragraphs 1 through 115 are realleged herein.

117. On or about July 15, 1998 in furtherance of the conspiracy to corruptly influence DeVaux's testimony under oath and in performance of the agreement between DeVaux and Defendants in the Employment Cases as well as Schwarz, Brown and Hairston, third-party witness DeVaux met with Rice and Hairston at the offices of Epstein Becker, at which time Rice and Hairston instructed DeVaux regarding her testimony to be given under oath, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXXIII

118. The allegations contained in paragraphs 1 through 117 are realleged herein.

119. On or about July 15, 1998 in furtherance of the conspiracy to corruptly influence DeVaux's testimony under oath and in performance of the agreement among DeVaux and Defendants in the Employment Cases as well as Schwarz, Brown and Hairston, third-party witness DeVaux appeared for deposition with Defendants Rice and Hairston representing **both** the Employment Cases Defendants **and** third-party witness DeVaux., at which time Rice and Hairston instructed DeVaux numerous times regarding her testimony under oath, including numerous instructions to DeVaux not to answer certain questions posed by Plaintiff Dr. Wallace, corruptly persuading her to withhold testimony, felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXXIV

120. The allegations contained in paragraphs 1 through 119 are realleged herein.

121. On or about July 15, 1998 in furtherance of the conspiracy to corruptly influence DeVaux's testimony under oath and in performance of the agreement between and among DeVaux, the Employment Cases Defendants, Schwarz, Brown and Hairston, third-party witness DeVaux refused, declined and failed to answer questions posed by Plaintiff Dr. Wallace, in accordance with Hairston's and Rice's instructions, withholding her testimony, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of title 18 of the United States Code.

COUNT XXXV

122. The allegations contained in paragraphs 1 through 121 are realleged herein.

123. On or about June 5, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena which was served on June 7, 1998 upon third-party witness Rhoda Weeks, compelling her to appear for a deposition on June 23, 1998.

124. On June 8, 1998 Dr. Wallace served copies of such subpoena on lawyers for the Employment Cases Defendants, Hairston of Paul Hastings and Brown of Epstein Becker.

125. Upon receiving notice of the subpoena issued to third-party witness Weeks, Employment Cases Defendant Bush, on behalf of, in conspiracy with and at the direction of the other Employment Cases Defendants Skadden Arps, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz, contacted third-party witness Weeks and offered her cost-free legal representation at the deposition to which she had

been compelled, to be provided by Paul Hastings and Epstein Becker and to be paid for by Skadden Arps, with the intent of influencing Weeks's testimony under oath, a felonious act of attempted bribery, witness tampering and obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

126. Third-party witness Weeks declined Bush's offer.

COUNT XXXVI

127. The allegations contained in paragraphs 1 through 126 are realleged herein.

128. In a telephone conversation with Dr. Wallace on or about July 6, 1998 Weeks and Dr. Wallace agreed that Weeks would comply with the subpoena by giving testimony on July 24, 1998.

129. Subsequently, Defendant Hairston contacted Weeks and arranged a lunch meeting with Weeks.

130. At such lunch meeting which subsequently took place, Defendant Hairston, on behalf of, in conspiracy with and at the direction of the Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz, renewed the offer to Weeks of cost-free legal representation for the deposition to which she had been compelled, to be provided by Paul Hastings and Epstein Becker and to be paid for by Skadden Arps, with the intent of influencing Weeks's testimony under oath, a felonious act of attempted bribery, witness tampering and obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

131. Third-party witness Weeks declined Hairston's offer

COUNT XXXVII

132. The allegations contained in paragraphs 1 thorough 131 are realleged herein.

133. On or about July 24, 1998 third-party witness Weeks, a lawyer representing herself, appeared for deposition in accordance with the subpoena issued to her and with her subsequent agreement with Dr. Wallace.

134. Defendants Brown and Hairston appeared on behalf of the Employment Cases Defendants.

135. On behalf of and in furtherance of the conspiracy among Employment Cases Defendants, Skadden Arps litigation practice leader Schwarz, Epstein Becker and Paul Hastings to corruptly influence Weeks's testimony under oath, Defendants Brown and Hairston intentionally harassed and intimidated third-party witness Weeks with scores of objections to the questions posed by Dr. Wallace, thereby hindering her testimony under oath, and endeavoring to influence Weeks's testimony under oath, including instructing third-party witness Weeks not to answer certain questions posed by Dr. Wallace, corruptly persuading her to withhold testimony, all felonious acts of witness tampering and obstruction of justice in violation of sections 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

136. Because of Hairston's and Brown's intimidation tactics, Weeks did not respond to certain questions posed by Plaintiff Dr. Wallace.

COUNT XXXVIII

137. The allegations contained in paragraphs 1 through 136 are realleged herein.

138. On or about June 5, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court subpoena which was served on June 7, 1998 upon third-party witness Defendant Simone Wu, a lawyer and member of the District of Columbia Bar, compelling Wu to appear for a deposition

on July 14, 1998.

139. On June 8, 1998 Dr. Wallace served copies of such subpoena on lawyers for the Employment Cases Defendants, Hairston of Paul Hastings and Brown of Epstein Becker.

140. After receiving the subpoena, Wu contacted Defendant Goetz and/or Bush, who, on behalf of the Employment Cases Defendants offered third-party witness Wu cost-free legal representation at the deposition to which she had been compelled, to be provided by Paul Hastings and Epstein Becker and to be paid for by Skadden Arps, with the intent of influencing Wu's testimony under oath, a felonious act of bribery, witness tampering and obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XXXIX

141. The allegations contained in paragraphs 1 through 140 are realleged herein.

142. At Goetz's prompting, Wu contacted Defendant Brown, lawyer for the Employment Cases Defendants, at which time Wu accepted the offer of cost-free legal representation of her at the deposition to which she had been compelled, to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps, in return for Wu's agreement to be influenced in her testimony under oath, and for her agreement to absent herself from the deposition to which she was compelled if so instructed by the Employment Cases Defendants or their lawyers, a felonious act of accepting a bribe and obstructing justice in violation of sections 201 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XL

143. The allegations contained in paragraphs 1 through 142 are realleged herein.

144. After such time that third-party witness Wu agreed to accept cost-free legal representation in exchange for the Employment Cases Defendants' influence of her and her testimony under oath, Defendants Paul Hastings and Epstein Becker, by and through Brown, Hairston and Rice, in furtherance of the conspiracy to influence Wu and in performance of her agreement to allow such influence, repeatedly, intentionally, and corruptly caused Wu's appearance for deposition to which she had been compelled to be delayed, hindered and prevented, repeatedly, knowingly and corruptly persuading third-party witness Wu, to absent herself from such compelled testimony, with the intention of preventing and hindering such testimony, all felonious acts of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code, which includes the following:

a. on or about June 12, 1998 in a letter of the date, Defendant Brown informed Dr. Wallace that third-party witness Wu would not appear for compelled testimony on July 14;

b. on or about June 18, 1998 in a letter of that date, Defendant Brown informed Plaintiff Dr. Wallace that third-party witness Wu would not give compelled testimony on July 24, 1998 as agreed, for her compliance the subpoena;

c. on or about July 21, 1998 in a letter of that date, Defendant Rice informed Plaintiff Dr. Wallace that Wu would not appear for compelled testimony until

August 24, 1998, nearly six weeks after the date compelled by the subpoena;

d. after requesting that Dr. Wallace provide an earlier date in August for Wu's compelled deposition, on or about July 28, 1998 in a letter of that date, Defendant Hairston refused to produce third-party witness Wu for compelled testimony on August 10, 1998;

e. on or about July 29, 1998 Defendant Hairston refused to produce third-party witness Wu for compelled testimony on either August 5 or 7, 1998;

f. after Defendant Brown in a letter dated July 29, 1998 offered to produce Wu for compelled testimony on August 3, 1998, she subsequently refused to produce third-party witness Wu for compelled deposition testimony on either August 3, 1998 or August 4, 1998 in letters dated July 31, and July 30, 1998, respectively.

COUNT XLI

145. The allegations contained in paragraphs 1 through 144 are realleged herein.

146. In performance of her agreement to be influenced by the Employment Cases Defendants, in return for cost-free legal representation provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps and in furtherance of the conspiracy among them, third party-witness Defendant Wu failed to appear for deposition testimony as compelled by the subpoena served upon her and failed to appear on any subsequent date agreed to by Brown, Rice or Hairston on her behalf, for the fulfillment of her obligations under the subpoena, all felonious acts of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering in violation of section 1962 (c) and (d) of

Title 18 of the United States Code.

COUNT XLII

147. The allegations contained in paragraphs 1 through 146 are realleged herein.

148. In or about mid-June, 1998 in furtherance of the conspiracy to influence Wu's testimony under oath and in performance of the agreement between Wu and Defendants in the Employment Cases as well as Schwarz, Brown and Hairston, third-party witness Wu met with Defendant Brown, at which time brown instructed Wu regarding her testimony to be given under oath, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XLIII

149. The allegations contained in paragraphs 1 through 148 are realleged herein.

150. On or about August 24, 1998 in furtherance of the conspiracy to influence Wu's testimony under oath and in performance of the agreement among Wu and Defendants in the Employment Cases as well as Schwarz, Brown and Hairston, third-party witness Wu appeared for deposition with Defendant Brown representing **both** the Employment Cases Defendants **and** third-party witness Wu at which time Brown instructed Wu numerous times regarding her testimony under oath, including instructions to Wu not to answer certain questions posed by Plaintiff Dr. Wallace, corruptly persuading her to withhold testimony, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XLIV

151. The allegations contained in paragraphs 1 through 150 are realleged herein.

152. After learning by way of Plaintiff Dr. Wallace's May 11, 1998 letter that third-party witness Defendant Scott Nance would be called to give deposition testimony in the Employment Cases, Defendant Rice, on behalf of and in conspiracy with Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz and at their direction and that of Brown and Hairston, contacted third-party witness Nance and offered him cost-free legal representation at his deposition in the event that Plaintiff Dr. Wallace subpoenaed him to appear, such legal representation to be provided by Paul Hastings and Epstein Becker and to be paid for by Skadden, Arps, with the intent of influencing Nance's testimony under oath, a felonious act of bribery, witness tampering and obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code. as a third-party witness to be called for deposition,

COUNT XLV

153. The allegations contained in paragraphs 1 through 152 are realleged herein.

154. Upon being contacted by Rice, third-party witness Nance, a named partner in the law firm Colby and Nance and member of the District of Columbia Bar, accepted the offer of cost-free legal representation, to be provided by Paul Hastings and Epstein Becker and paid for by Skadden Arps, in return for his agreement to be influenced in his testimony under oath, a felonious act of accepting a bribe and obstructing justice in violation of sections 201 and 1503 of Title 18 of the United States Code, as part of a

pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XLVI

155. The allegations contained in paragraphs 1 through 154 are realleged herein.

156. On or about August 24, 1998 in furtherance of the conspiracy to corruptly influence Wu's testimony under oath and in performance of the agreement between and among Wu, the Employment Cases Defendants, Schwarz, Brown and Hairston, third-party witness Wu refused, declined and failed to answer questions posed by Plaintiff Dr. Wallace, in accordance with Brown's instructions, withholding her testimony, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962(c) and (d) of title 18 of the United States Code.

COUNT XLVII

157. The allegations contained in paragraphs 1 through 156 are realleged herein.

158. On or about July 17, 1998 Plaintiff Dr. Wallace issued a D.C. Superior Court Subpoena and served such subpoena on July 19, 1998 on third-party witness Scott Nance, compelling his testimony under oath on August 6, 1998.

159. In furtherance of the conspiracy to corruptly influence third-party witness Nance's testimony under oath and in performance of his agreement with the Employment Cases Defendants to allow the influence of his testimony, third-party witness Nance met with Defendant Rice, at which time Rice instructed him regarding his testimony to be given under oath, knowingly and corruptly impeding the administration of justice, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of

racketeering activity, in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT XLVIII

160. The allegations contained in paragraphs 1 through 159 are realleged herein.

161. On or about August 6, in furtherance of the conspiracy to corruptly influence third-party witness Nance's testimony under oath and in performance of his agreement allowing the Employment Cases Defendants to influence his testimony under oath, third-party witness Nance met with Hairston at the offices of Epstein Becker at which time Hairston, in conspiracy with, on behalf of and at the direction of Employment Cases Defendants Skadden Arps, Bush, Baer, Casey, Lighthizer, Mangan, McCoy and Hindman and Skadden Arps litigation practice leader Schwarz, instructed third-party witness Nance regarding his testimony to be given under oath, knowingly and corruptly influencing and impeding the due administration of justice, a felonious act of obstruction of justice and witness tampering in violation of sections 1503 and 1512 of Title 18 of the United States Code, as part of a pattern of racketeering activity in violation of section 1962 of Title 18 of the United States Code.

COUNT XLIX

162. The allegations contained in paragraphs 1 through 161 are realleged herein.

163. On August 6, 1998 Nance appeared for deposition, with Abbey Hairston of Epstein Becker, Ellen Rice of Paul Hastings and Henry P. Baer of Skadden Arps all appearing as counsel for the Employment Cases Defendants **and** counsel for third-party witness Nance, in furtherance of the conspiracy to corruptly influence Nance's testimony under oath and in performance of the agreement between Nance and the Employment Cases Defendants that Nance be influenced under oath.

164. At such time, Hairston and Rice, acting on behalf,

in conspiracy with and at the direction of Employment Cases Defendants, on numerous occasions instructed third-party witness Nance regarding his testimony under oath, including instructing him not to answer questions posed by Plaintiff Dr. Wallace, knowingly and corruptly persuading Nance with the intent of influencing his testimony and inducing him to withhold testimony, all felonious acts of witness tampering and obstruction of justice in violation of sections 1503 and 1512 of title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962 of Title 18 of the United States Code.

COUNT L

165. The allegations contained in paragraphs 1 through 164 are realleged herein.

166. In furtherance of the conspiracy to corruptly influence Nance's testimony under oath and in performance of the agreement between Nance and the Employment Cases Defendants to allow influence over his testimony, third-party witness Nance followed Hairston's and Rice's instructions, failing, refusing and declining to answer certain questions posed by Dr. Wallace and withheld testimony in accordance with their instructions, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT LI

167. The allegations contained in paragraphs 1 through 166 are realleged herein.

168. On or about August 17, 1998 in a letter of that date, on behalf of, at the direction of and in conspiracy with the Employment Cases Defendants and Defendants Brown, Rice and Schwarz, Defendant Rice wrote to Plaintiff attempting to put certain deposition testimony of

third party witnesses under seal and attempting to preclude its use as evidence of Defendants' racketeering activities, including bribery of witnesses, witness tampering and obstruction of justice, a felonious act of obstruction of justice in violation of section 1503 of Title 18 of the United States Code, as a part of a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

COUNT LII

169. The allegations contained in paragraphs 1 through 168 are realleged herein.

170. Unnamed Defendants A through Z[2] on behalf of and/or in conspiracy with and/or at the direction of the Employment Cases Defendants corruptly offered and/or accepted goods and/or services of value, with the intent of influencing the testimony of a third-party witness called or to be called in the Employment Cases, and/or endeavored to corruptly influence, delay or prevent the testimony of a third-party witness in such proceedings, all felonious acts of bribery and/or witness tampering and/or obstruction of justice in violation of sections 201, 1512 and 1503 of Title 18 of the United States Code, as a pattern of racketeering activity in violation of section 1962(c) and (d) of Title 18 of the United States Code.

DEMAND FOR JURY TRIAL

Plaintiff, Dr. Katherine T. Wallace hereby demands a trial by jury for the resolution of the controversy raised in this Complaint.

INJUNCTIVE RELIEF

Because Defendants' continued pattern of racketeering activities, including the tampering with and bribery of third-party witnesses and obstruction of justice has caused and threatens to continue to cause irreparable harm and injury to Plain-

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[2] To be identified through discovery.

tiff in her business and property and because Plaintiff has no adequate remedy at law, Plaintiff is entitled to injunctive relief as part of her remedy pursuant to section 1964(a) of Title 18 of the United States Code.

WHEREFORE, by reason of the foregoing, Plaintiff, DR. KATHERINE T. WALLACE, PH.D. requests that this honorable Court, after notice and hearing, enter a preliminary injunction prohibiting and enjoining the Defendants from continuing their racketeering activities, together with an appropriate fine on a per diem basis post injunction; after trial of the cause, a permanent injunction prohibiting and enjoining the Defendants from continuing their racketeering activities together with an appropriate fine on a per diem basis post judgment; cost and expenses attributable to this action; reasonable attorneys' fees and such other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREAS Defendants are jointly and severally liable for all damages suffered by Plaintiff as a result of the foregoing felonious acts and pattern of racketeering, Plaintiff KATHERINE T. WALLACE, PH.D. demands judgment against Defendants as follows:

A. Compensatory damages in the amount of $120,000,000 (One Hundred Twenty Million Dollars) to be awarded threefold for injury to Plaintiff's business and property;
B. Costs and expenses attributable to this action;
C. Appropriate injunctive relief;
D. Reasonable attorneys fees; and
E. Such further and other relief as this honorable Court deems proper.

Respectfully Submitted,

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Plaintiff, Attorney pro se

(2)

No. 00-547

Supreme Court, U.S.
FILED
NOV 9 2000
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IN THE

Supreme Court of the United States

KATHERINE T. WALLACE,

Petitioner,

v.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is the Superior Court of the District of Columbia a "court of the United States" for purposes of 18 U.S.C. §§ 1503 and 1512?

2. Must a court assume the truth of bald assertions of law made in a complaint in addressing a motion to dismiss for failure to state a claim?

3. Respondents' counsel spoke on the telephone with the law clerk for the district judge in this case to determine whether an order had been entered. Did this telephone call constitute misconduct, or create the appearance of impropriety, by the district judge, requiring recusal under 28 U.S.C. § 455(a)?

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BRIEF IN OPPOSITION

Respondents respectfully submit this brief in opposition to the petition for a writ of certiorari.

STATEMENT

1. Petitioner Katherine T. Wallace was an associate with the law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden, Arps" or the "Firm") from 1993 until 1995, when her employment was terminated. Following her termination, she filed a defamation and wrongful discharge complaint against the Firm and several of its lawyers in the Superior Court for the District of Columbia seeking $50 million in damages. The defendants in that lawsuit recently obtained summary judgment on all counts. Petitioner has appealed the judgment to the District of Columbia Court of Appeals.

Petitioner subsequently filed a second lawsuit in Superior Court, this one alleging that Skadden, Arps and its lawyers had discriminated against her because of her marital status (she is married with children) and her race (she is African American). In this second suit, she sought $85 million. The defendants in that case obtained summary judgment as well on all counts, and petitioner has also appealed this case to the District of Columbia Court of Appeals.

2. During the course of litigating the Superior Court cases, petitioner deposed a number of lawyers and administrative staff members who previously had worked at Skadden, Arps. Because these former employees became involved in the litigation only as a result of their employment at Skadden, Arps, the Firm offered to pay for legal representation — either by the lawyers then representing the

Firm, or by lawyers chosen individually by each witness. Of 10 former-employee witnesses, five chose to be represented by the attorneys then representing the defendants in those cases, three selected counsel of their own (whom the Firm then paid), and two chose to be unrepresented.

3. Skadden, Arps' offer to pay for the lawyers representing its former employees is the *sole* alleged basis for this lawsuit. Petitioner claims that when Skadden, Arps agreed to pay for the legal representation of its former employees, it committed bribery, witness tampering, obstruction of justice and, cumulatively, racketeering activity in violation of the Racketeering Influenced and Corrupt Organizations Act of 1970 ("RICO"), 18 U.S.C. §§ 1964(c), (d). Petitioner has sued seven witnesses who accepted Skadden, Arps' offer (whether or not they were represented by Skadden, Arps' lawyers); each of the lawyers who represented any one of these deponents (partners in a number of other firms); many others (including junior associates) who were only tangentially involved in the representations; and all of the law firms in which those lawyers work (collectively referred to in this brief as "respondents"). She sought $360 million for these purported RICO violations. Pet. App. A70.

4. For all of its 40 pages, 52 Counts, and 170 numbered paragraphs, petitioner's Amended Complaint never alleged a single fact indicating that the Firm's offer influenced — or was intended to influence — the substance of the testimony given by the deponents. Specifically, petitioner did not, and could not, claim that Skadden, Arps interfered or attempted to interfere with the attorney-client relationship existing between these former employees and their various counsel. Petitioner did not allege that this representation was

compromised in any respect by the offer made by Skadden, Arps. Moreover, petitioner did not, and could not, allege (1) that Skadden Arps conditioned the payment of legal fees on any deponent's willingness to testify in any particular manner, or even to testify at all; (2) that any one of the deponents lied during any of these depositions, much less that the fee arrangement offer was contingent on such a lie; or (3) that any one of the respondents supplied any deponent with an answer to any question, much less that the fee arrangement was offered as a *quid pro quo* for the witness' willingness to give such an answer.

5. In the absence of any such allegations (and for other reasons), the district court dismissed the Amended Complaint. The court observed that the conduct alleged in the complaint is commonplace — indeed, employers in many states and in a variety of contexts are compelled by statute to offer employees reimbursement for business-related legal expenses. Accordingly, the court concluded that as a matter of law, it is not unlawful for an employer to offer to pay for legal services rendered to a former employee, absent facts that suggest that the reimbursement offer was made "corruptly" with the hope of directing the content of that testimony. The court also observed that while petitioner's complaint had parroted the language of the relevant statutes — alleging respondents' "corrupt" intent to "influence" testimony — the complaint did not allege the necessary factual predicates for the claim.

6. The court of appeals affirmed in a unanimous unpublished order. Acknowledging that a complaint need not be pled with evidentiary detail, the court held that "where plaintiff makes clear that the allegations rest on specific facts that do not suffice, and no other set of facts, grant of a motion

under Rule 12(b)(6) is appropriate." Pet. App. A2. Affirming "substantially" for the reasons stated by the district court, the court of appeals concluded an employer does not engage in bribery, witness tampering, or obstruction of justice merely by indicating its willingness to pay for a lawyer to represent its employees or former employees in litigation arising from the employment relationship.

7. On the day the respondents filed their motion to dismiss petitioner's Amended Complaint, petitioner filed a motion for partial summary judgment. Petitioner's motion and its attachments totaled nearly 400 pages. Because petitioner's accusations of bribery, obstruction of justice, and witness tampering were so evidently frivolous, respondents reasonably sought to forestall the expense of answering petitioner's motion for partial summary judgment until the district court had resolved the pending motion to dismiss. Accordingly, respondents filed a motion to stay consideration of the summary judgment motion until the motion to dismiss had been decided.

In the absence of relief from the district court, the respondents' opposition to the summary judgment motion would have been due on Monday, September 21, 1998. Accordingly, when respondents had not received any decision on their stay motion by the afternoon of Wednesday, September 16, counsel for respondents called the chambers of the district judge to ask the judge's law clerk whether the motion had been decided, and if not, to inquire as to whether a decision might be expected before the opposition would be due. Counsel did not have any communication with the district judge, and did not discuss the merits of the motion for a stay — or any other matter — with the law clerk during this conversation.

Later that same day, the court faxed an order to respondents. The order did not grant respondents' motion for a stay. It did, however, indicate that the respondents were not obligated to file a response to the motion for partial summary judgment until the court addressed the motion to stay on the merits.[1]

8. On the basis of these facts, the district judge became the latest victim of petitioner's personal attacks. Because respondents' billing records — submitted in support of sanctions that had already been imposed on petitioner by the district court[2] — reflected the conversation between respondents' counsel and the judge's law clerk, petitioner accused the judge of succumbing to alleged *ex parte* persuasion by respondents' counsel. The court of appeals found no impropriety in respondents' limited contacts with chambers. Pet. App. A4. Neither did it find any evidence of judicial bias. *Id.*

The accusation represents the latest step in petitioner's continuing, vindictive attempt to vilify anyone and everyone with the temerity to oppose or disagree with her:

- After receiving an adverse ruling on a discovery matter, petitioner accused a judge of the Superior

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1. For the Court's convenience, copies of the relevant Superior Court papers have been lodged with the Office of the Clerk of this Court rather than appended to this brief. The Court is entitled to take judicial notice of these materials. *Papasan v. Allain*, 478 U.S. 265, 267 & n.1 (1986) (Court may take judicial notice "of items in the public record").

2. Because petitioner's claims were so clearly baseless, and so clearly animated by bad faith, respondents sought sanctions under 28 U.S.C. § 1927. Petitioner did not respond to the sanctions request, and the district court awarded sanctions. Pet. App. A12-A13.

Court, who was then presiding over one of her lawsuits, of "bias and prejudice" against petitioner and "bias[] in favor of [respondents] and their counsel, all law firms. . . ." She accused the judge of "accord[ing] an unfair advantage to [respondents] and their counsel" all because the judge indicated to petitioner in open court that, as a practicing attorney, petitioner would be given no special consideration because of her *pro se* status;

- Petitioner accused a lawyer defending Skadden, Arps in the first of her Superior Court lawsuits of unethical conduct, and sought to have her sanctioned, for an assertedly improper use of an ellipsis;

- In yet another sanctions motion, petitioner accused Skadden, Arps, and each of the lawyers representing the Firm (including very junior associates), of "illegal and unethical behavior" for issuing two subpoenas which, petitioner contended, were defective because the recipients were beyond the Superior Court's 25-mile subpoena power.

9. Petitioner sought rehearing and suggested rehearing *en banc*. Both the petition and the suggestion were denied. This petition followed.

REASONS FOR DENYING THE PETITION

1. Petitioner seeks review on the question whether the Superior Court of the District of Columbia is a "court of the United States" for purposes of 18 U.S.C. §§ 1503 and 1512. That question possesses none of the qualities that ordinarily make a question worthy of a grant of certiorari. Sup. Ct. R. 10.

First, the question was not necessary to the judgment below, and accordingly was not directly addressed in the order of the court of appeals in this case.[3] That order, then, could not conflict with any decision of this Court. Second, as petitioner correctly points out (Pet. 7, 14), the question is one of first impression in any appellate court. Moreover, because the question has never been confronted by a single appellate court, by definition, the question is not the sort of recurring question of federal law that would merit review by this Court. Under these circumstances, it is simply not possible to maintain that "compelling reasons" exist for a grant for certiorari. Sup. Ct. R. 10.

Finally, the district court — which reached the issue as an alternative basis for its decision — was correct in concluding that the Superior Court is not a "court of the United States." That decision is consistent with the handful of district court decisions on point, and in defining that phrase in other contexts, Congress has twice indicated that the phrase does not include the Superior Court.

2. Petitioner contends that the court of appeals misapplied the standards for considering a motion to dismiss. Petitioner is incorrect; the court identified the settled and unchallenged legal standard and applied it correctly to petitioner's complaint. The court of appeals simply determined that, as a matter of law, an employer does not engage in racketeering activity — bribery, witness tampering,

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3. The court of appeals did indicate that it was affirming "substantially for the reasons" given by the district court, and the district court concluded that the Superior Court was not a "court of the United States." Because the district court provided alternate grounds for its decision to dismiss the Complaint, however, the court of appeals' position on this subsidiary question is unclear.

or obstruction of justice — when it offers to pay the legal bills of employees drawn into litigation solely as a result of their work activities. That is all petitioner's complaint alleged, and the court's legal conclusions were both correct and entirely unremarkable.

But even if the court of appeals mistakenly applied the settled rules applicable to these motions — and it plainly did not — no question worthy of certiorari would be posed by that error. The court of appeals identified the legal standard applied universally in the courts of appeals, and applied that standard to the bizarre and highly idiosyncratic allegations of petitioner's complaint. Correcting any perceived error in the precise way in which the court parsed the language of the complaint in this case would not decide an important question of federal law or correct such a "depart[ure] [by the court of appeals] from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a).

3. Petitioner contends that a judge is obligated to recuse herself under 28 U.S.C. § 455(a) if her law clerk takes a telephone call from counsel for a litigant regarding the administrative status of a motion in a pending case. Petitioner cites no law for this extraordinary proposition, posits no inter-circuit conflict, no divergence from the opinions of this Court, and no compelling reasons for a grant of certiorari. Petitioner feels aggrieved by the district court's action, but that action did not prejudice her in any way, was entirely consistent with controlling legal and ethical standards, and presents no colorable basis for review.

I. NONE OF THIS COURT'S STANDARDS FOR GRANTING REVIEW IS MET WITH RESPECT TO THE QUESTION WHETHER THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA IS A "COURT OF THE UNITED STATES"

Petitioner argues that the Court should grant review in this case to determine whether the Superior Court of the District of Columbia is a "court of the United States" within the meaning of two federal criminal statutes. Petitioner claims that certiorari is warranted "because the question [has] never [been] decided by any court of appeals and because the D.C. Circuit declined to issue an opinion in the proceedings below. . . ." Pet. 7.

In articulating her argument for review, petitioner has convincingly established that review is not warranted. As the Court has explained, a writ of certiorari issues "only for compelling reasons." Sup. Ct. R. 10. Typically, review is granted to permit the Court "to clarify a recurring question of [federal] law that has been the subject of considerable disagreement." *Commissioner v. Soliman*, 506 U.S. 168, 184 (1993) (Thomas, J., concurring),[4] or when the court below has "decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c).

As petitioner concedes, these conditions are not present here. This Court has never decided the question. The court of appeals did not discuss the question and the question was not necessary to its resolution of the appeal; therefore the

4. *See also Swanner v. Anchorage Equal Rights Comm'n*, 513 U.S. 979 (1994) (Thomas, J., dissenting from the denial of certiorari) ("confusion on an important and recurring question of federal law provides sufficient reason to grant certiorari").

judgment below cannot conflict with any holding of this Court. No court of appeals has ever reached the question before; therefore there can be no division of appellate authority on the question. In fact, the court of appeals in this case did not independently analyze the question presented, and issued no opinion on the subject. If no appellate court has *ever* been forced to grapple with the issue in the entire history of the Superior Court, it is difficult to imagine a "compelling reason" for this Court to become the first.[5]

Moreover, even if there were a raging controversy on the status of the Superior Court, this case would provide a poor vehicle to decide the question. The central holding of the district court's opinion was that petitioner's complaint failed to state a cause of action because the conduct she alleged — an employer's reimbursement of legal fees incurred by its employees in business-related litigation — would violate none of the statutes on which her claim relied. Thus, even if the Court were to grant review on the narrow legal question regarding the Superior Court's status, it would have no effect whatever on the disposition of the case. *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) ("[r]esolution . . . [of the question posed] can await a day when the issue is posed less abstractly").

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5. *McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J.) (certiorari denied where issue requires "further study" in the lower courts "before it is addressed by this Court"); *accord Gilliard v. Mississippi*, 464 U.S. 867, 869 (1983) (reflecting view of court that Court should "postpone consideration of the issue [presented] until more state supreme courts and federal circuits have experimented with . . . solutions to the problem").

Finally, the district court plainly answered the question correctly. Three other district court decisions address the question, and in all three, the courts have concluded that the Superior Court was not a "court of the United States" for these purposes.[6] When the question has arisen in other contexts, courts have regularly agreed that the District of Columbia local courts are not "courts of the United States,"[7] and the lower courts have repeatedly reached the same conclusion as to other Article I courts.[8]

Moreover, the Federal Rules of Criminal Procedure — the rules governing federal prosecutions arising under §§ 1503 and 1512 — apply "in the courts of the United

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6. *United States v. Smith*, 729 F. Supp. 1380 (D.D.C. 1990); *United States v. Allen*, 729 F. Supp. 120 (D.D.C. 1989); *United States v. Regina*, 504 F. Supp. 629 (D. Md. 1980).

7. *See, e.g., Christian v. United States*, 394 A.2d 1, 44 & n.105 (D.C. 1978) (recognizing that "the Superior Court is not a 'court of the United States,' as defined by 28 U.S.C. § 451"); *Dillard v. Yeldell*, 334 A.2d 578, 580 (D.C. 1975) ("this court is not a 'court of the United States' as defined in 28 U.S.C. § 451"); *Burke v. United States*, 103 A.2d 347, 349 (D.C. 1954) (Juvenile Court of the District of Columbia is not a "court of the United States").

8. *See, e.g., United States v. George*, 625 F.2d 1081, 1088-89 (3d Cir. 1980) (§ 1503 case; federal district court for the Virgin Islands is not a "court of the United States"; "[t]he fact that its judges do not hold office during good behavior and that the court is thus excluded from the definition of 'court of the United States' which is contained in 28 U.S.C. § 451 is confirmatory of this"); *United States v. Ford*, 641 F. Supp. 704 (D.S.C. 1986) (§ 1503 case; military courts-martial are not "courts of the United States"), *aff'd mem.*, 816 F.2d 674 (4th Cir. 1987); *United States v. Bell*, 108 F. Supp. 777, 778 (D. Alaska 1952) (§ 1503 case; District Court of Territory of Alaska is not a "court of the United States").

States." The term is defined to include "the United States District Courts . . . the United States Courts of Appeals, the Supreme Court of the United States" — *i.e.*, federal Article III courts — and specifically enumerated territorial courts.[9] Fed. R. Crim. P. 1, 54(a). As defined, however, the term does *not* include the Superior Court. Similarly, the Judiciary Code defines the phrase "court of the United States" to include "the Supreme Court of the United States, [the federal] courts of appeals, [federal] district courts . . . and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior." 28 U.S.C. § 451. Superior Court judges serve a term of fifteen years, and thus the definition does not extend to them. *See* D.C. Code § 11-1502 (2000).

In sum, there are no "compelling reasons" to grant review in this case and no reason to suppose that the courts below answered this question incorrectly. Review should be denied.

II. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARDS TO RESPONDENTS' MOTION TO DISMISS AND CORRECTLY CONSTRUED PETITIONER'S COMPLAINT

Petitioner also attacks the manner in which the courts below construed her complaint. Petitioner suggests that the court improperly expected her complaint to contain a level of detail she was not obligated to plead. Although she casts her disagreement as a dispute over legal standards, petitioner's grievance goes to the application — or alleged misapplication — of settled legal principles. Petitioner

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9. These include, for example, District Courts in the Northern Mariana Islands and Guam. Fed. R. Crim. P. 54(a).

identifies no error made by the courts below on an important question of federal law, no division of authority among the courts of appeals, and no compelling reasons for review, as explained in section A. Petitioner argues not that the courts below adopted a controversial legal standard, but that they misapplied the accepted legal standard to the peculiarities of her complaint. This contention is demonstrably false, as explained in section B below, but even if this were true, this Court "does not sit primarily to correct what [it] perceive[s] to be mistakes committed by other tribunals." *Watt v. Alaska*, 451 U.S. 259, 275 (1981) (Stevens, J., concurring).

A. THE COURTS BELOW IDENTIFIED AND APPLIED THE CORRECT LEGAL STANDARD

The standards for considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6) are settled and uncontroversial: (1) the complaint's *factual* allegations must be taken as true[10]; (2) but the court is "not bound to accept as true a legal conclusion couched as a factual allegation,"[11] take as true "opprobrious epithets"[12] contained in the complaint, or draw inferences in the plaintiff's favor that are not warranted by the complaint's factual allegations[13]; and (3) when "plaintiff makes clear that the allegations rest on specific facts that do not suffice, and no other set of facts, grant of a motion

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10. Pet. App. A2, A6-7; *Papasan*, 478 U.S. at 286.

11. *Papasan*, 478 U.S. at 286.

12. *Snowden v. Hughes*, 321 U.S. 1, 10 (1944).

13. Pet. App. A7.

[to dismiss] is appropriate."[14] As the First Circuit has explained, "the price of entry, even to discovery, is for the plaintiff to allege a *factual* predicate concrete enough to warrant further proceedings, which may be costly and burdensome. Conclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition." *DM Research, Inc. v. College of Am. Pathologists*, 170 F.3d 53, 55-56 (1st Cir. 1999).

Those were precisely the standards recited and then applied by the courts below. After concluding, as a matter of law, that it is not *per se* unlawful for an employer to offer to reimburse its employees (or former employees) for incurred legal expenses — a proposition of law on which petitioner does *not* seek certiorari — both courts below searched the complaint for some further factual allegations of wrongdoing that might state a claim entitling petitioner to recover. There are none. Petitioner alleged, for example, that Skadden, Arps offered to reimburse deponents for legal representation "corruptly" and "with the intent of influencing [the deponents'] testimony," Pet. App. A38, but that language, lifted directly from the text of 18 U.S.C. § 201, is no more than "a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286 (plaintiffs' allegation that they had been denied "a minimally adequate education" was a legal conclusion, not an allegation of fact binding on the district court in considering a motion to dismiss).

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14. Pet. App. A2; *Papasan*, 478 U.S. at 267 n.1 (motion to dismiss is appropriate mechanism to resolve dispute where "[t]he historical facts . . . are not disputed by the parties, . . . the parties disagree only on the legal significance of the facts"); *see also Chongris v. Board of Appeals*, 811 F.2d 36, 37 (1st Cir.) (court must construe facts alleged in plaintiff's favor "exempt[ing], of course, those 'facts' which have been conclusively contradicted by [plaintiff's] concessions"), *cert. denied*, 483 U.S. 1021 (1987).

Thus, the district court determined that the *factual* allegations in petitioner's complaint were insufficient to state a claim, and that her "corrupt intent" and "intent to influence testimony" assertions were merely vague legal conclusions the court was not obliged to accept as true. The court of appeals agreed. Both courts applied standards adopted by this Court and utilized in every circuit.[15] Petitioner plainly believes (incorrectly) that the courts below erred and that these assertions should have been treated as allegations of fact rather than assertions of law. That claim, however, raises questions about the application of settled legal standards to the peculiarities of petitioner's complaint, not the sort of unsettled issue of federal law for which the Court ordinarily reserves review.

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15. *See, e.g.*, *Papasan*, 478 U.S. at 286; *see also DM Research*, 170 F.3d at 55-56 (rule of lenity in construction of complaint does not extend to bald assertions, subjective characterizations, and legal conclusions); *Leeds v. Meltz*, 85 F.3d 51, 53 (2d Cir. 1996) ("[w]hile the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice"); *Bender v. Suburban Hosp.*, 159 F.3d 186, 192 (4th Cir. 1998) (court entitled to ignore plaintiff's labels and conclusions and address solely the factual allegations of the complaint); *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) ("[a]t the very least, however, the complaint must contain facts which state a claim as a matter of law and must not be conclusory"); *Halkin v. VeriFone Inc.*, 11 F.3d 865, 868 (9th Cir. 1993) ("[c]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss"); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) ("conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based").

B. THE COURTS BELOW CORRECTLY APPLIED SETTLED LEGAL PRINCIPLES TO THE CONCLUSORY ALLEGATIONS AND LEGAL ASSERTIONS OF PETITIONER'S COMPLAINT

Although no "compelling reason" exists for this Court to review the highly individualized application of these well-established rules to petitioner's complaint, were it to do so, it would find that the courts below were entirely correct.

First, although petitioner does not seek certiorari on the point,[16] the courts below were plainly correct in concluding that it is not unlawful *per se* for an employer to offer to reimburse the legal expenses incurred by an employee in business-related litigation.[17] In some states, indemnification is compelled by statute, for example, when the employee is actually sued or for any expenses of business-related litigation in which the employee is involved.[18] Indeed,

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16. *Irvine v. California*, 347 U.S. 128, 129 (1954) (consideration limited to questions listed in "Questions Presented").

17. Petitioner suggests that there is a conflict between the decision below and *Hamilton v. General Motors Corp.*, 490 F.2d 223, 228 (7th Cir. 1973), but that case supports the decision below. In *Hamilton*, the court declined to enforce an implied contract to compensate a fact witness for time spent preparing to testify and in giving testimony. The witness, however, was reimbursed for out-of-pocket expenses associated with his testimony, which the court did not disturb. In this case, the deponents were not paid any compensation. They were simply reimbursed for their legal expenses.

18. *See, e.g.*, Cal. Lab. Code § 2802 (2000) (requiring employer to "indemnify" any employee "for all that employee necessarily expends or loses" in litigation related to the employee's

(Cont'd)

indemnification of expenses is expressly permitted by the rules of professional conduct in the District of Columbia, where the allegedly unlawful conduct occurred. *See* D.C. Rules of Professional Conduct 1.8(e), 1.8 cmt. 6, 1.13(c), 5.4(c) (permitting third-party payment for legal services, absent conflict of interest or interference with lawyer's independent professional judgment).[19] The courts below correctly eschewed an interpretation of the federal witness tampering, bribery, and obstruction of justice statutes that would condemn this commonplace and salutary practice.[20]

(Cont'd)

duties taken in good faith); *see also* 18B Am. Jur. 2d *Corporations* §§ 1900, 1902; D.C. Code Ann. § 29-304(16) (acknowledging power of corporation to indemnify officers and directors); Fla. Stat. § 607.0850(3) (2000) (requiring indemnification of employees); *Gaines v. Walker*, 986 F.2d 1438, 1443 (D.C. Cir. 1993) (recognizing implied duty to indemnify); *McLean v. International Harvester Co.*, 817 F.2d 1214, 1221-23 (5th Cir. 1987) (requiring Delaware company to indemnify former employee who successfully defended employment-related litigation).

19. "A corporation may hire and pay the fees of a lawyer to represent corporate constituents [*e.g.*, employees] so long as there is no interference with, or diminution of, the lawyer's obligations to his constituent client." D.C. Bar Ethics Op. 269.

20. *Cf. United States v. Ramsey*, 165 F.3d 980, 985 (D.C. Cir. 1999) (rejecting claim that prosecutors violated § 201(c)(2) when they promised leniency to a criminal defendant in return for truthful testimony; "such an interpretation of section 201(c)(2) would end a centuries-old practice"; "a *sub silentio* change of this magnitude to the well-established prosecutorial practice . . . would be . . . unprecedented. Such a change ignores the rule of statutory construction that '[a] party contending that legislative action changed settled law has the burden of showing that the legislature intended

(Cont'd)

Second, the courts below correctly concluded that — beyond the *per se* rule petitioner urged, condemning *any* reimbursement by employers — petitioner had failed to plead "a short and plain statement" of the facts that might entitle her to relief. Fed. R. Civ. P. 8(a)(1). The statutes on which petitioner relies proscribe certain behaviors if done "corruptly." Pet. App. A19, A23, A24. The term

> "corruptly" . . . means "depraved, evil: perverted into a state of moral weakness or wickedness . . . of debased political morality: characterized by bribery, the selling of political favors, or other improper political or legal transactions or arrangements. . . ." A "corrupt" intent may also be defined as "the intent to obtain an improper advantage for oneself or someone else, inconsistent with official duty and the rights of others."

United States v. North, 910 F.2d 843, 881-82 (D.C. Cir. 1990) (quoting Ballentine's Law Dictionary 276 (3d ed. 1969)).

(Cont'd)
such a change' ") (quoting *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 521 (1989)), *cert. denied*, 120 S. Ct. 223 (1999); *United States v. Singleton*, 165 F.3d 1297, 1299 (10th Cir.) (*en banc*) (holding that criminalizing a plea agreement under § 201(c)(2) "would not only be a radical departure from the ingrained legal culture of our criminal justice system but would also result in criminalizing historic practice and established law"), *cert. denied*, 527 U.S. 1024 (1999). In *Ramsey* and *Singleton*, the U.S. Attorney entered into explicit agreements conditioning leniency in sentencing on favorable testimony. No *quid pro quo* even remotely similar is alleged in this case.

The complaint contained few suggestions of behavior petitioner might claim to be corrupt, and the ones she did include were manifestly insufficient. For example, petitioner complained that in a few instances, counsel for the deponents instructed their clients not to answer questions petitioner asked about privileged conversations between the deponent and counsel, and to refrain from divulging the names of certain individual Skadden, Arps attorneys who had experienced prior performance difficulties. *See, e.g.*, Pet. App. A51, A58.[21] Petitioner also alleged that respondents "delay[ed]" depositions, *See, e.g.*, Pet. App. A46, but the Amended Complaint lacks any *factual* allegations from which one might conclude that this was done corruptly. Apparently, petitioner believes that respondents engaged in "racketeering" activity when their counsel rescheduled depositions to accommodate the schedules of all concerned. The courts below correctly determined that an attorney does not, as a matter of law, act "corruptly" when she attempts to reschedule a deposition, objects to inquiries into privileged matters, or designates documents as confidential.

Finally, petitioner did not allege — and could not truthfully allege — a causal relationship between the reimbursement offer and the "influence" she decries, *i.e.*, that the offer of cost-free legal services was, in any respect, contingent on the testimony

21. Tellingly, petitioner does not, and could not, quibble with the merits of the objections themselves. Petitioner never sought to compel answers to her questions regarding privileged conversations, and the Superior Court sustained the objections regarding the confidential personnel data. Thus, rather than "corruptly" seeking to "influence" the testimony of witnesses (as petitioner alleged), counsel merely protected the legitimate interests of their clients, and the clients merely followed the advice of counsel. The "legitimate acts of attorneys on behalf of clients cannot form the basis of a RICO claim." *Morin v. Trupin*, 711 F. Supp. 97, 105-06 (S.D.N.Y. 1989).

the witnesses were about to give. This Court has held explicitly that this sort of *quid pro quo* relationship is the *sine qua non* of bribery under § 201(b). *See United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999). Because there is no suggestion — in the Amended Complaint or in this case — of such a *quid pro quo* arrangement, dismissal was entirely warranted.

III. THE DISTRICT JUDGE ENGAGED IN NO CONDUCT WARRANTING RECUSAL

Petitioner suggests that certiorari is warranted to review the district judge's failure to recuse herself following a telephone call to her chambers by respondents' counsel. Again, petitioner posits no recurring question of federal law she seeks to have answered, no split of authority on any substantive legal standard, and no compelling reasons for review.

Petitioner does, however, suggest that the courts below erred in failing to treat the alleged recusal question in this case like the one in *United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995). Petitioner's reliance on *Microsoft* is telling. In that case, the D.C. Circuit ordered a matter reassigned on remand because: (a) when the district judge determined that a consent decree proposed by the Department of Justice and the defendant was inadequate, the judge did so, in part, on the basis of allegations made about the defendant's business practices in a book he had read; (b) the district judge had allowed third party companies to argue against the proposed consent decree while remaining anonymous, both to the public and to the defendant; and (c) the district judge accepted for filing extensive *ex parte* memoranda and materials going directly to the merits of the controversy from these anonymous entities.

In this case, by contrast, respondents' counsel made a telephone call to the law clerk in the district judge's chambers (not to the judge) to inquire about a purely administrative matter (not the merits) — *i.e.*, whether an order might be expected regarding its request for a stay before the time ran for filing a response to petitioner's 400-page submission in support of her motion for partial summary judgment. No statute, rule, or ethical consideration is violated by a call from counsel to a judge's law clerk to determine the procedural status of a motion before the court.[22]

In *Williams v. Phillips Petroleum Co.*, 23 F.3d 930 (5th Cir.), *cert. denied*, 513 U.S. 1019 (1994), for example, the plaintiff argued that the defendant's counsel, *inter alia*, had "engaged in improper *ex parte* communications with the district judge['s] . . . law clerks." *Id.* at 938. The plaintiff's accusation was based on billing records submitted in the district court by defendant's counsel. The records, however, disclosed only that defendant's counsel had spoken on a few occasions with the judge's case manager and his law clerk "re: status," "re: hearing requested," "re: discovery conference," and "re: resolution on motions." *Id.* at 938-40.[23] From these entries, the Fifth Circuit determined that "[t]he record [was] singularly devoid of evidence that the contacts were improper." *Id.* at 938.

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22. Petitioner makes much of the alleged fact that she did not receive the affidavit filed in support of respondents' fee petition until a much later date. According to respondents' records, however, the affidavit was served by hand to petitioner's last known address.

23. Petitioner intimates that the Fifth Circuit concluded that the contacts with the case manager were proper but that contacts with the law clerk were not. In fact, both types of contacts were at issue, and the court held that both were proper. *Williams*, 23 F.3d at 938.

Indeed, it held that

> [l]acking any evidence that the contacts were improper, the accusations of plaintiffs' counsel are scurrilous, frivolous, and contrary to the duties of an officer of the court. . . . Trying to sell this court on his conspiracy theories, he has attempted to put a veneer of impropriety on innocent contacts by quoting selectively from [counsel's] time sheets and even mischaracterizing the parties involved. We will not stand by idly and allow an attorney to waste the time of this court and maliciously denigrate the reputations of judges and other officers of the court.

Id. at 938-40; *see also LaChappelle v. City of El Cajon*, No. 97-55699, 1998 U.S. App. LEXIS 7931, at *2 (9th Cir. Apr. 22, 1998) ("discussion between . . . counsel and Judge Jones's law clerk regarding scheduling the summary judgment motion was not an improper ex parte communication").

This is but the latest in a series of baseless, vindictive lawsuits brought by petitioner to harass and sully the reputation of those with whom she disagrees. There was no misconduct by the district judge or by respondents or their counsel, and there are no issues in this case worthy of certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

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No. 00-547

IN THE SUPREME COURT OF THE UNITED STATES

KATHERINE T. WALLACE, PH.D.,
Petitioner,
v.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, ET AL.,
Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

REPLY TO BRIEF IN OPPOSITION

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Petitioner, Katherine T. Wallace, respectfully submits this Reply to Brief in Opposition and respectfully renews her request that this Court grant certiorari to review the questions presented by her petition.

I. THE LOWER COURT DECISIONS AS TO THE STATUS OF COURTS CREATED PURSUANT TO THE DISTRICT CLAUSE CONFLICT WITH THIS COURT'S DECISION AND REASONING IN EMBRY V. PALMER.

Respondents argue that there is no compelling reason for this Court to review the D.C. Circuit's decision in this case. In particular, they state that there is no conflict among the circuits on the issue of whether the D.C. Superior Court is a "court of the United States," nor does the D.C. Circuit's decision below conflict with any decision of this Court. Their argument ignores the fact that the status of the Districts institutions, especially its courts, has been historically controversial and further, ignores the decisions which this Court has rendered addressing the controversy.

The decisions of the lower courts on this issue, both in this case and in the three cases relied upon below directly conflict with the reasoning and result of Embry v. Palmer, 107 U.S. 3, 30 (1882). There, contrary to the three district court decisions which ruled that the D.C. Superior Court is not a "court of the United States," this Court held that a court established under "the right of exclusive legislation over the District which the Constitution has given to Congress" was a "court of the United States." Id. at 30-31. This reasoning applies precisely to the Superior Court of the District of Columbia, which was so created.

Respondents' argument that the term "court of the United States" is limited to Article III courts, does nothing to

end the controversy. This reasoning has been overruled by Congress's 1994 passage of 18 U.S.C. § 23, which states:

> "[a]s used in [Title 18], except where otherwise expressly provided the term 'court of the United States' includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands."

18 U.S.C. § 23 (2000). The three courts included are territorial courts created by Congress under power granted it by Article IV § 3, cl. 2. See also United States v. George, 652 F.2d 1081, 1088-1089 (3d Cir. 1980). Their inclusion expressly demonstrates that the term "court of the United States" is not limited to Article III Courts and conclusively overrules the conclusion, relied on by Petitioners, that section 451 of the Judiciary Act governs the definition of the term as it is used in 18 U.S.C. §§ 1503 and 1515(a).

Indeed, the plain words of 28 U.S.C. § 451, **"[a]s used in this title,"** limit the definition's applicability to Title 28. 28 U.S.C. § 451 (1999) (emphasis added). The definition cannot be expanded to any other title or determine the meaning of the term "court of the United States" as used in 18 U.S.C. §§ 1503 and 1515(a).

Moreover, it is noteworthy that in construing the former section 1257 of Title 28, then governing certiorari and appeal, that this Court refused to imply that the D.C. Code was a "statute of a State," but held it to have its natural common sense and constitutionally correct meaning - an Act of Congress - even where the D.C. Court of Appeals is defined as "the highest court of a State" in the very same section of the statute. Palmore v. United States, 411 U.S. 389, 395 (1973). In Palmore, this Court made clear that in construing the status of the District of Columbia, its laws and institutions, courts must rely only on **express**, not implied,

congressional intent.

Within Title 18 itself, there is no indication of any intent by Congress that the D.C. Superior Court be excluded from the definition of the phrase "court of the United States." Not only does section 23 expand the definition of the term, expressly including non-Article III courts, but it is silent on the status of the District's courts. Rather, the status of the District of Columbia and its institutions is defined in many individual sections and subsections of Title 18. Those definitions are by their own terms limited to the sections or subsections in which they appear. Notably, no such definition appears within section 1503, 1512 or 1515.

Because the intent of Congress with respect to the definition of the term "court of the United States" under sections 1503 and 1515(a) of Title 18 is silent on the status of the Superior Court of the District of Columbia, because the applicable district court decisions contain inconsistent and self-contradictory reasoning and because the status of the District's courts is a controversy historically addressed by this Court, certiorari should be granted in this case.

II. THE LOWER COURTS' DETERMINATION ON THE FACTUAL QUESTION OF INTENT ON A RULE 12(b)(6) MOTION TO DISMISS IS AN EGREGIOUS DEPARTURE FROM ACCEPTED AND MANDATED PROCEDURE REQUIRING THE SUPERVISORY INTERVENTION OF THIS COURT.

In asserting that the correct standards were applied below to the motion to dismiss, Respondents argue that the lower courts were free to ignore "legal conclusions" in the First Amended Complaint:

> "corrupt intent" and "intent to influence testimony"

assertions were merely vague legal conclusions the court was not obliged to accept as true." Resp. Br. at 15.

Respondents' own argument makes clear that the lower courts acted improperly, because it is based on the proposition, contrary to well-settled law, that an allegation of intent is a legal conclusion, rather than a factual assertion.

Respondents' argument has no basis in law. It is well-settled that intent is a factual issue, a question of fact for the jury. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970) (Black, J., concurring in the judgment); see also Morrisette v. United States, 342 U.S. 246, 274 (1952) (holding that where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury). Thus, the courts below were indeed obliged accept the allegations of corrupt intent and intent to influence or impact testimony as true. Leatherman v. Tarrant Cty. Narcotics Unit, 507 U.S. 163, 164 (1993); United States v. Gaubert, 499 U.S. 315, 327 (1991). The district court's dismissal of the First Amended Complaint because of its failure to "prove" "corroborate" or "provide evidence" of corrupt intent is plainly an extreme departure from the accepted and legally required judicial treatment of a motion to dismiss. This departure, which the court of appeals has sanctioned, warrants this Court's supervisory intervention.

III. THERE IS NO RIGHT OF INDEMNIFICATION FOR THIRD PARTY FACT WITNESSES.

Respondents' reliance on the concept of indemnification has no basis in law and is irrelevant to the questions before this Court. Indeed, both statutory and common law indemnification principles are wholly inapplicable to dealings with third-party witnesses. All the

statutes and cases Respondents cite in their brief demonstrate that indemnification is a concept applicable only to persons who have been sued or are parties to a litigation, not to third-party fact witnesses called to testify.[1] Thus, defense of one's conduct as an employee, as well as success in that defense, is an absolute prerequisite to indemnification. See e.g. Gaines v. Walker, 986 F.2d 1438, 1442 (D.C. Cir. 1993). Witnesses in general, and the third-party fact witnesses at issue in this case have not been required to "defend their conduct."

Respondents' argument perverts an equitable principle designed to prevent the unjust enrichment of one liable party at the expense of another, to a use for which it was never intended and has never been applied: the compensation of third-party fact witness and the attendant influence over their sworn testimony. See East Penn Manufacturing Co. v. Pineda, 578 A.2d 1113, 1126 (D.C. 1990) (quoting Restatement (Second) of Torts § 886B comment c (1965): "the basis for indemnity is restitution, and the concept that one person is unjustly enriched at the

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[1] See e.g Fla. Stat. § 607.0850(1) and (2), cited by Respondents, which limits such indemnification to "any person who was or is **a party** to any proceeding" because "he or she is or was a director, officer, employee, or agent of the corporation . . . ."; (emphasis added); McLean v. International Harvester Co., 817 F.2d 1214, 1221-23 (5th Cir. 1987), cited by Respondents, (requiring Delaware company to indemnify former employee acquitted of criminal charges for acts performed as corporation's vice-president); 18B Am. Jur. 2d Corporations at §§ 1898, 1900) (indemnification promotes the desirable end of "permitting capable individuals to serve their employers with knowledge that their reasonable expenses in **defending their conduct** will be borne by [the employer] they have served if they are vindicated") (emphasis added); Jacobus v. Krambo, 78 Cal. App. 4th 1098, 1100 (2000) (holding that Cal. Lab. 2802 (cited by Respondents) requires an employer to indemnify an employee for attorney fees and costs **in defending** an action if the employee **was sued** for acts within the scope of his employment) (emphasis added).

expense of another when the other discharges liability that it should be his responsibility to pay . . . ."). This argument must be rejected

Respondents next argue that the sole basis of Petitioner's lawsuit were such reimbursement or indemnification offers. Again, Respondents are wrong in fact as well as law. The First Amended Complaint alleges that witness testimony was directly influenced and/or delayed or prevented by instructions from Skadden Arps, through its attorneys. Pet. App. at A43-A44, A50-A51, A53, A54, A57, A60, A62, A63, A64, A67-A68.

Moreover, the issue raised in the Complaint is not that Skadden Arps interfered with the attorney-client relationship between the third-party witnesses and "their" counsel, rather that Skadden Arps interfered with the due administration of justice. As the First Amended Complaint alleges and the record below reflects, those attorney-client relationships existed only at the behest and insistence of Skadden Arps. Skadden Arps made offers as soon as it learned or suspected the person would be subpoenaed. The resulting attorney-client relationships came about only because Skadden Arps, through its own individual Defendant-partners or through hired counsel acting on its instructions, solicited those third-party witnesses for representation by Skadden Arps' attorneys. Pet. App. at A37-A38, A49, A52, A54, A55, A56, A58-A59, A61, A65. The resulting attorney-client relationships, as the First Amended Complaint alleges, exist only because Skadden Arps paid for them.

Finally, Respondents argue that there is no "causal relationship between the reimbursement offer and the 'influence'. . ." Resp. Br. at 19. Again, they are incorrect. The First Amended Complaint repeatedly alleges a quid quo pro agreement. For example, Count IV reads, in part:

> [T]hird-party witness Rickman contacted

> Employment Cases Defendant Bush and/or Goetz and sought cost-free legal representation at the deposition to which she had been compelled, **in return for allowing the Employment Cases Defendants to influence her testimony under oath**, . . .

Pet. App. at A41. (emphasis added). See also Pet. App. at A42, A47, A49, A52, A56, A61, A65. Cf. United States v. Sun-Diamond Growers, 526 U.S. 398 (1999) (holding that this sort of *quid quo pro* relationship is the *sina qua non* of bribery under section 201(b)). Moreover, the First Amended Complaint alleges that Skadden Arps made offers to persons once they knew or suspected that they would be subpoenaed, in other words, "for or because of" the testimony to be given under oath. Pet. App. at A42-A43, A52, A54-A56, A58-A59, A60-A61, A65.

Nevertheless, it is plain from its Memorandum Opinion, that the district court did not accept these allegations as true, but raised the bar for the consideration of the First Amended Complaint beyond that which is legally mandated. Moreover, the district court assessed factual issues in the complaint, a departure from accepted and required legal procedure which the court of appeals sanctioned. Therefore, this Court should grant certiorari to review the court of appeals' decision.

IV. THE COURT OF APPEALS' SANCTION OF AN APPEARANCE OF IMPROPRIETY CREATED BY THE DISTRICT JUDGE'S ACCEPTANCE OF AND ACTION ON *EX PARTE* COMMUNICATIONS WITH RESPONDENTS WARRANTS CONSIDERATION BY THIS COURT.

It is undisputed that on September 16, 1998 Respondents filed a Motion to Stay consideration of

Petitioner's motion for partial summary judgment in the district court. They admit that they called the judge's chambers that same afternoon. By their own words, Defendants apparently anticipated a decision on their motion the same day it was filed, regardless of whether Petitioner had the opportunity to oppose. When they did not receive this treatment, they telephoned the judge's chambers, were immediately granted the relief they sought and it was faxed to them. Resp. Br. at 4-5.

This treatment is indeed extraordinary in light of the year long pendency of the other motions before the district court. On the other hand, Petitioner received neither call nor fax, but discovered the contact fourteen months later. Although Respondents claim that the *ex parte* contact was innocent, Petitioner, who was excluded, can never verify this claim.

Respondents urge this Court to ignore the extraordinary events surrounding their *ex parte* communication with the district court's chambers, attempting to reduce it to an innocent phone call. But according to their own admissions:

- On September 16, 1998, Respondents filed a motion to stay Petitioner's motion for partial summary judgment;

- That same afternoon, September 16, they contacted the judge's chambers "regarding an order to be issued in response to motion to stay," Rec. on App. at 673.

- That same afternoon, September 16, the district court issued and faxed an order to Respondents relieving them of the requirement of responding to Petitioner's motion for partial summary judgment and Respondents were never required to file an

opposition;

- Neither the district judge, the judge's clerk nor Respondents ever disclosed that the telephone conference took place.

This series of events, not the simple placing of a phone call to the judge's law clerk, create the appearance of impropriety. The district judge's actions, in acting immediately on an *ex parte* communication are a departure from accepted judicial procedure which is universally decried by legal and ethical principles and, which on their face, raise due process concerns.

Respondents failed to cite any case which would sanction such occurrences. Unlike Williams v. Phillips Petroleum, 23 F.3d 930 (5th Cir. 1994), for example, in which phone calls to the judge's clerk were administrative, here the ex parte telephone conference was admittedly to discuss an Order in response to a motion filed that same day, and indisputably resulted in a favorable order issued and faxed to Respondents. In short, the court accepted *ex parte* communications and acted upon them. Even if the court's actions were legally justified, they created an appearance of impropriety and prejudiced the rights of Petitioner who had no opportunity to participate in the court's considerations. See United States v. Microsoft Corp., 56 F.3d 1448, 1463 (D.C. Cir. 1995). Because this is so, and because this egregious departure from accepted judicial procedure was sanctioned by the court of appeals, this Court should grant certiorari to assert its supervisory powers over the lower courts in this case.

CONCLUSION

For all the foregoing reasons, Petitioner, Katherine T. Wallace respectfully requests this honorable Court to grant a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

Respectfully Submitted,

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